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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, Jr., *et al.*,

15 Defendants.
16
17
18

Case No. CV 17-7357 JCS

Assigned to:
The Honorable Richard G. Seeborg

Discovery Matters:
The Honorable Thomas S. Hixson

**SUPPLEMENTAL DECLARATION OF
DAMION ROBINSON IN OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT OF THE CITY OF MENLO
PARK AND POLICE CHIEF DAVE
BERTINI**

Date: March 18, 2021
Time: 1:30 p.m.
Courtroom: 3, 17th Floor

Action Filed: December 28, 2017
Trial Date: TBD

1 I, Damion Robinson, declare:

2 1. My law firm and I are counsel of record to plaintiff Michael Zeleny (“Zeleny”) in
3 this action. I have personal knowledge of the facts below or knowledge based on the records and
4 files of my firm regularly maintained in the ordinary course of business. I could testify
5 competently to these facts if called upon to do so. I submit this declaration to supplement the
6 previous declaration I submitted in support of my Motion for Partial Summary Judgment against
7 the City of Menlo Park (the “City”) and Chief Dave Bertini (“Bertini”) [Dkt. No. 162-1] (the
8 “Prior Declaration”).

9 2. True copies of complete transcripts of Volumes 1 and 2 of Bertini’s deposition
10 were submitted with my Prior Declaration. I am attaching the excerpts referenced in this
11 opposition with relevant portions highlighted for ease of reference.

12 3. Attached as **Exhibit 1** is a true copy of excerpts of Volume 1 of the transcript of
13 Bertini’s deposition taken March 19, 2019.

14 4. Attached as **Exhibit 2** is a true copy of excerpts of Volume 2 of the transcript of
15 Bertini’s deposition taken August 7, 2020

16 5. Attached as **Exhibit 3** is a true copy of excerpts of the transcript of the deposition
17 of Matt Milde, taken on March 5, 2020

18 6. Attached as **Exhibit 4** is a true copy of excerpts of the deposition of Nicolas
19 Flegel, taken on March 3, 2020.

20 7. Attached as **Exhibit 5** is a true copy of excerpts of the deposition of Alex
21 McIntyre, taken on July 31, 2020.

22 8. Attached as **Exhibit 6** is a true copy of an email exchange between Al Serrato,
23 Assistant District Attorney for San Mateo County, and Bertini, among others, dated July 28, 2015.
24 This document was produced by the City in discovery and introduced at Bertini’s deposition,
25 Volume 2, as Exhibit 263.

26 9. Attached as **Exhibit 7** is a true copy of a film permit produced by the City in
27 discovery in this matter and introduced as Exhibit 73 at Mr. Flegel’s deposition. As noted, the
28 application was filed January 31, 2016 and approved February 5, 2016—*i.e.*, six days later. The

1 permit includes filming from the median of Sand Hill Road.

2 10. On January 11, 2019, I issued Plaintiff Michael Zeleny's First Set of
3 Interrogatories to City of Menlo Park. Interrogatory No. 8 provided: "IDENTIFY each policy,
4 procedure, rule, regulation, ordinance, guideline or guidance of the City of Menlo Park governing
5 applications for permits of the type that Zeleny has sought from the City of Menlo Park."

6 11. A true copy of relevant excerpts of the City's initial responses to the
7 interrogatories, dated February 25, 2019, are attached as **Exhibit 8**.

8 12. A true copy of relevant excerpts of the City's supplemental responses to the
9 interrogatories, dated March 5 and served March 6, 2020, is attached as **Exhibit 9**. These
10 interrogatories were served three days after the deposition of Nicolas Flegel. Based on my
11 knowledge of the file in this matter, this appears to be the first time that the City mentioned its
12 supposed lack of ownership of the median strip where Zeleny first proposed to stage his event.

13 13. The City's failure to disclose its theory that it does not own or control the median
14 strip until very late in discovery was highly prejudicial, and made especially so by the City's
15 assertion of privilege to block Bertini from testifying as to the basis of this theory. It prevented us
16 from examining witness with knowledge on the basis for this theory or the underlying facts.

17 14. Attached as **Exhibit 10** is a true copy of relevant excerpts of the City's second
18 supplemental responses to the interrogatories, dated May 27, 2020.

19 15. Based on my review of the City's productions, it does not appear that the City
20 produced Municipal Code § 13.18, *et seq.*. The only Municipal Code sections that I have found in
21 the City's production relate to the prohibition on carrying firearms, produced as MP0001842.

22 16. The City's failure to disclose its new theory that its construction encroachment
23 process, Municipal Code § 13.18, *et seq.*, governs film permitting during the discovery process
24 was also highly prejudicial. We were unable to examine any of the City's witnesses on the
25 application of those Municipal Code sections, including Mr. Flegel, the City's declarant on the
26 issue, or Mr. Bertini, the Rule 30(b)(6) designee.

27 17. Attached as **Exhibit 11** is a true copy of a document entitled "Adoption of
28 Resolution Amending the City's Master Fee Schedule ..." produced by the City in discovery

18. Attached hereto as **Exhibit 12** is a true copy of the Notice of Deposition of the City of Menlo Park, which I issued on January 24, 2019.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 4th day of February, 2021 at Los Angeles, California.

s/ Damion Robinson
Damion Robinson

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 IN RE MATTER OF:)
)
5)
)
6 MICHAEL ZELENY,)
)
7 Plaintiff,)
)
8 vs.) CASE NO. CV 17-7357 JCS
)
9 EDMUND G. BROWN, JR., et al.,)
)
10 Defendant.)
)

11

12

13 VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

14 VOLUME I

15 Menlo Park, California

16 Tuesday, March 19, 2019

17

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19

20

21

22

Stenographically Reported by:

23

HEATHER J. BAUTISTA, CSR, CRR, RPR

24

25

1 event that is one that would cause the applicants to
2 encroach upon the public right-of-way to block streets
3 that have a number of people, more than 100, that would
4 require police presence and/or response or would require
10:25 5 or would deal with the noise ordinance if it was very
6 noisy and those things that are, you know, special by
7 their very nature; they're not a normal day-to-day
8 occurrence.

9 Q. Is that the City's -- strike that.

10:26 10 Was that the City's definition, to the best of
11 your knowledge, of a special event?

12 A. To the best of my recollection.

13 Q. Is that definition of a special event written
14 down anywhere?

10:26 15 A. There is a form on the website that gives a
16 frequently asked questions, and it outlines some of the
17 factors that would cause one to need a special event
18 permit.

19 Q. Other than the frequently asked questions
10:26 20 portion of the City's website, is there any other place
21 where the definition of a special event is written down?

22 A. Not that I'm aware of.

23 Q. One part of your answer was that the event is
24 special by its very nature. Do you recall saying that?

10:27 25 A. I do.

1 Q. What does that mean?

2 A. What that means is someone would not need a
3 special event for something that is -- that they're
4 doing in the course of the business or is covered by
10:27 5 some other business permit or other type of permit
6 that's allowing them to do what they're doing.

7 Q. Approximately how many -- strike that.

8 That portion of the deposition -- that portion
9 of the definition of special event relating to something
10:27 10 that's special by its very nature, is that piece of it
11 written down anywhere?

12 A. No.

13 Q. Is there any way for the public to learn of
14 that requirement?

10:28 15 A. If they were to apply for one or call and ask a
16 question.

17 Q. So this special-by-its-very-nature requirement
18 is not part of the City's website?

19 A. That's correct. If someone already had a
10:28 20 permit or an encroachment permit for something else,
21 they would not need a special events permit on top of
22 that.

23 Q. So if I'm understanding right, is it your
24 testimony that this criteria, that the event be special
10:28 25 by its very nature, means an event that doesn't have a

1 MR. MASTER: I'll just object to the extent
2 that you're asking him to potentially answer questions
3 that go beyond the scope of his designation.

4 But to the extent he has an understanding, he
10:31 5 may.

6 THE WITNESS: I'm sorry.

7 Q. (By Mr. Robinson) Let me step back for a
8 second. It's the City's view -- and I'm asking about
9 Item 4 on Attachment 1, the defendant's interpretation
10:31 10 of the California statutes.

11 It's the City's position that in order to be an
12 authorized participant either in a video production or
13 an entertainment event, the City has to authorize the
14 event itself?

10:31 15 A. That's correct.

16 Q. And the way in which the City would authorize
17 an event of the type that Mr. Zeleny was seeking to
18 conduct would be either through a special events permit
19 or a film permit; right?

10:31 20 A. Those are the only two that I'm aware of.

21 Q. Okay.

22 And at the time Mr. Zeleny applied for the
23 special events permit, you're aware that he didn't have
24 a film permit; correct?

10:32 25 A. Correct.

1 **A.** I'm not sure.

2 **Q.** Is there someone else within the City of Menlo
3 Park who would know whether the factors for granting or
4 denying a special events permit that are not included on
10:36 5 the application itself are written down?

6 **A.** No.

7 **Q.** Nobody within the City of Menlo Park is aware
8 of whether these additional factors are written down?

9 **MR. MASTER:** Objection. Asked and answered.

10:36 10 Argumentative.

11 **Q.** (By Mr. Robinson) You can answer.

12 **A.** The answer would be every department has its
13 own list of requirements of what they're looking at
14 specifically to their department, and I assume that
10:36 15 every department -- or I know every department would
16 have somebody who would be making that determination.

17 **Q.** Are the lists maintained by the various
18 departments within the City written down?

19 **A.** I don't know the answer to that for every
10:36 20 department.

21 **Q.** Are the factors considered by the police
22 department written down?

23 **A.** They are on a checklist on the application
24 process, but there is no, like, you know, codified list
10:36 25 of you must do X, Y, Z, because every situation, every

1 event, is going to be different.

2 Q. When you refer to a checklist, are you
3 referring to the checklist on the permit application
4 itself?

10:37 5 A. Correct.

6 Q. Okay.

7 Beyond completing the checklist on the permit
8 application itself, are there other factors that the
9 police department considers in deciding whether or not
10 to approve a special events permit?

11 A. It would depend on what the special event was
12 asking to do.

13 Q. So the factors that you would consider vary
14 event by event?

10:37 15 A. From the police department specifically, it
16 would be public -- mostly -- almost all public safety
17 factors.

18 Q. What public safety factors are considered?

19 MR. MASTER: Objection. Vague and ambiguous.
10:37 20 Overbroad. Incomplete hypothetical.

21 You can answer.

22 THE WITNESS: Traffic control, crowd control,
23 noise ordinances, safety to the general public; things
24 of that nature.

10:38 25 Q. (By Mr. Robinson) When you say "things of that

1 Is there some objective standard in assessing
2 the traffic impact?

3 MR. MASTER: Object. Vague and ambiguous.
4 Overbroad.

10:42 5 THE WITNESS: So it would depend, again, on
6 what was being requested, where it was being requested.
7 We would work with other departments, such as our Public
8 Works traffic division, and there would have to be a
9 discussion within the City on whether or not traffic
10:42 10 control was needed, could an event be done in this
11 location without a major -- major impact into traffic.

12 Q. (By Mr. Robinson) The considerations that you
13 just talked about regarding traffic impact, are those
14 considerations written down anywhere?

10:43 15 A. Well, they are mentioned in the application for
16 special event permit.

17 Q. Other than being mentioned in the special event
18 permit -- strike that.

19 Other than what's written in the permit
10:43 20 application itself, are the factors that the City would
21 consider relating to traffic control or traffic impact
22 written down anywhere?

23 A. No.

24 Q. Do the factors that you consider vary from
10:43 25 event to event?

1 **A.** Yes.

2 **Q.** In working with the other City departments to
3 assess the traffic impact of a proposed event, is there
4 any level of discretion within the City to decide
10:43 5 whether it would have too much of a traffic impact?

6 **A.** Yes, there's discretion.

7 **Q.** You mentioned before a major impact.

8 What is a major impact on traffic?

9 **A.** It's not quantifiable.

10:44 10 **Q.** Is that an assessment that's also in the
11 discretion of the City personnel who consider the
12 application, whether it's a major impact or not?

13 **A.** In discussions with other departments, yes.

14 **Q.** And what -- moving to crowd control.

10:44 15 Is crowd control another of those factors that
16 varies event to event?

17 **A.** Yes.

18 **Q.** And the criteria that you would use to assess
19 the event depends on what type of event it is; correct?

10:44 20 **A.** Certainly.

21 **Q.** Is that also true of safety to the general
22 public?

23 **A.** That it depends on the --

24 **Q.** That the criteria you consider in analyzing
10:45 25 whether an event poses a safety risk to the general

1 public depend on what type of event it is?

2 A. Of course.

3 Q. And is it accurate that those other factors,

4 crowd control and safety to the general public, also

10:45 5 involve some level of discretion on the part of the

6 police department and other City entities that are

7 involved in processing the application?

8 A. Certainly, because we could put conditions to

9 mitigate those issues, if necessary.

10:45 10 Q. How long has the City had a special events
11 permitting process in place?

12 A. The -- there was a process prior to me arriving
13 in the City in 2011, but I am aware that in 2012 and the
14 beginning of 2013, a new process was put into place.

10:46 15 Q. Is the process that you've been describing up
16 until this point the process that was put in place in
17 2012 or 2013?

18 A. Yes.

19 Q. Could you estimate the number of special event
10:46 20 permit applications the City has received since it put
21 this process in place in 2012 or 2013.

22 A. I would estimate -- and this is just by looking
23 at the discovery, you know, over a hundred.

24 Q. How many of those -- if you could estimate, how
10:46 25 many of those were denied?

1 considered by the police department and the criteria
2 you've just listed for the other departments, are you
3 aware of any other criteria that are considered?

4 **A.** Not that I'm aware of.

10:51 5 **Q.** Are the criteria that you just mentioned
6 regarding the other departments written down anywhere?

7 **A.** There is a checklist on the application.

8 **Q.** Aside from the checklist on the permit
9 application, are those criteria that you mentioned for
10:51 10 the other departments written down anywhere?

11 **A.** I don't know.

12 **Q.** Is there someone else on behalf of the City who
13 would know?

14 **A.** I would assume that whoever is the contact
10:52 15 person in that department may have something written. I
16 don't know the answer to that.

17 **Q.** Is there anything written that's accessible to
18 the public about the criteria that are considered?

19 **A.** I believe everything that's on the website is
10:52 20 what is accessible. I'm not sure if there's anything
21 other than that.

22 **Q.** One of the factors you mentioned was whether
23 the event is for the good of the public.

24 Do you recall saying that?

10:52 25 **A.** Yes.

1 Q. Is there a particular person at Community
2 Services?

3 A. It would vary, depending on who is currently
4 there when the intake of the permit comes in.

10:54 5 Q. The standard that you mentioned in your
6 previous answer about an event being open to the public,
7 comprising a community event, do you know if that
8 standard is written down somewhere?

9 A. That is specifically stated in the application
10:54 10 process.

11 Q. When you refer to the application process,
12 you're referring to the application that someone fills
13 out; right?

14 A. Yes.

10:55 15 Q. How long is a special event allowed to last
16 within the city of Menlo Park?

17 A. That would depend on the event.

18 Q. Is there any fixed time limit? Events can be
19 10 days or 20 days or two months? Is there any
10:55 20 objective limit on how long it can last?

21 A. No. It would depend on the event.

22 Q. How does the City decide what kind of time
23 frame to impose on an event?

24 MR. MASTER: Objection. Vague. Ambiguous.

10:55 25 Incomplete hypothetical. Calls for speculation.

1 You can answer.

2 **THE WITNESS:** It would depend on the type of
3 event. Time, place, and manner is one of the things
4 that we are looking at, and it depends -- it would
10:55 5 depend on whether the event had a large-scale impact or
6 not. And so it would -- it would -- again, it's
7 difficult to answer your question without having a
8 specific event that you're asking about.

9 **Q.** (By Mr. Robinson) Is the length of time an
10:56 10 event will be allowed determined on an event-by-event
11 basis?

12 **A.** Yes.

13 **Q.** Is there any objective standard that you're
14 aware of for deciding how long an event can last?

10:56 15 **MR. MASTER:** Objection. Vague, ambiguous, and
16 overbroad.

17 You can answer.

18 **THE WITNESS:** Go back to the time, place, and
19 manner requirements that we're looking at, depending on
10:56 20 what the impact of everything else that I've already
21 talked about would be.

22 **Q.** (By Mr. Robinson) What I'm trying to get at is
23 if I'm a citizen and I want to put on a special event,
24 is there anywhere that I could go to figure out what the
10:56 25 criteria that the City is using are so that I can

1 satisfy the criteria and have my permit application
2 granted?

3 MR. MASTER: It's a different question. It's
4 vague and ambiguous and overbroad.

10:56 5 You can answer.

6 THE WITNESS: You would have to tell us what
7 kind of event and where you were doing it before we
8 could answer that question.

9 Q. (By Mr. Robinson) So the criteria that would
10:57 10 be used depend on what type of event and where; is that
11 accurate?

12 A. And how long; correct.

13 Q. But is that -- okay.

14 So the criteria that the City would use in
10:57 15 assessing an event depend on what type of event, where
16 it's going to be conducted, and how long; correct?

17 A. And you would have to include all the impacts
18 that I've already talked about; that would also be what
19 we would be looking at.

10:57 20 Q. Okay.

21 So my question is just whether the factors that
22 are considered by the City vary based on the type of
23 event, the location, and the time.

24 A. And the factors I've already discussed: The
10:57 25 impact on public safety, traffic, crowd control;

1 trying to figure out what your answer meant.

2 So maybe we can just start from the factors
3 considered by the City vary based on the nature of the
4 event, the location, and the timeline of the event; is
10:58 5 that accurate?

6 A. Yes.

7 Q. And the factors that may be considered are the
8 factors that you've told me for the various departments
9 a few minutes ago; right?

10:59 10 A. Yes.

11 Q. And those factors are discretionary factors
12 that are considered in consultation with the various
13 departments; right?

14 A. In some cases, yes.

10:59 15 Q. Which of the factors are, other than
16 discretionary factors, considered in consultation with
17 the various departments?

18 A. Well, there are the factors that are
19 specifically listed on the application.

10:59 20 Q. Okay.

21 I see. So some of the factors, like you have
22 to have insurance and those types of factors are not
23 discretionary.

24 A. Correct.

10:59 25 Q. The other factors that we've talked about

1 previously in your deposition, those are discretionary
2 factors discussed or addressed among the various
3 departments?

4 MR. MASTER: Object. It's vague, ambiguous,
10:59 5 and it's overbroad.

6 You can answer.

7 THE WITNESS: And it would be -- yes, based on
8 time, manner, and place. That's what we would have to
9 look at.

11:00 10 MR. ROBINSON: Why don't we mark this as
11 Exhibit 30, please.

12 (Exhibit 30 was marked for identification.)

13 Q. (By Mr. Robinson) For the record, Exhibit 30
14 is two pages, Bates marked in the bottom right corner

11:00 15 MP1822 to 1823; correct?

16 A. Was that to me?

17 Q. Yes.

18 A. Yes.

19 Q. Do you recognize Exhibit 30?

11:01 20 A. I do.

21 Q. What is it?

22 A. It's a special event permit flow chart that
23 was -- that is placed on the website.

24 Q. Does it generally describe the process of
11:01 25 processing a permit application for a special event

1 and 2016?

2 **A.** My role was to forward it to the city manager's
3 office and the city attorney's office.

4 **Q.** Other than Mr. Zeleny's permit application,

11:06 5 have you ever forwarded another special event permit

6 application to the city manager and city attorney?

7 **A.** No.

8 **Q.** Okay.

9 Why did you forward Mr. Zeleny's permit

11:06 10 application to the city manager and city attorney?

11 **A.** Based on the nature of the application and what
12 was being contemplated by Mr. Zeleny as far as the open
13 carry of weapons and the public safety issues that would
14 ensue.

11:07 15 **Q.** Are you aware of any -- excuse me.

16 Are you aware of any other permit application
17 in the history of the permit application process that
18 was forwarded to the city manager and the city attorney
19 before an appeal other than Mr. Zeleny's?

11:07 20 **A.** Yes.

21 **Q.** How many?

22 **A.** Me, personally? At least one.

23 **Q.** What did that relate to?

24 **A.** To a bicycle race through the city.

11:07 25 **Q.** And that was before any appeal?

1 **A.** Are you speaking --

2 MR. MASTER: Is that a question?

3 **Q.** (By Mr. Robinson) I'm asking you to -- I'm

4 asking you to clarify that that's the only thing, in

11:12 5 your view, that he's done that's unsafe, as the person

6 most knowledgeable on behalf of the City of Menlo Park.

7 **A.** In -- when he was protesting?

8 **Q.** Correct.

9 **A.** When we speak of the broader public safety

11:12 10 realm, we are also speaking of the impact on passersby.

11 We receive numerous 9-1-1 calls and complaints about an

12 armed man standing at a corner of a street, which

13 obviously impacts public safety, it impacts our

14 resources, et cetera, and could, in fact, cause a safety

11:13 15 concern based on a driver driving by and seeing an armed

16 man.

17 **Q.** That's something related to Mr. Zeleny carrying

18 the unloaded weapons; right?

19 **A.** Yes.

11:13 20 **Q.** So other than Mr. Zeleny carrying unloaded

21 weapons and ammunition, is there anything else that he's

22 done that the City of Menlo Park considers unsafe?

23 MR. MASTER: I'll just object as to relevance,

24 "safety"; but vague and ambiguous.

11:13 25 You can answer.

1 **THE WITNESS:** **No.**

2 **Q.** (By Mr. Robinson) I didn't hear your answer.

3 **A.** No.

4 MR. MASTER: We've been going for a little over
11:13 5 an hour. Why don't we take a five-minute break.

6 MR. ROBINSON: Sure.

7 THE VIDEOGRAPHER: We are now going off the
8 record. The time is 11:13 a.m.

9 (Recess taken from 11:13 a.m. to 11:24 a.m.)

11:24 10 THE VIDEOGRAPHER: We are now going back on the
11 record. The time is 11:24 a.m.

12 **Q.** (By Mr. Robinson) I want to take up what we
13 were just talking about before, which is the public
14 safety concern related to Mr. Zeleny having unloaded
11:24 15 firearms and ammunition with him.

16 You mentioned another factor in your decision
17 to refer Mr. Zeleny's permit application to the city
18 manager and city attorney being the open carry nature of
19 the protest.

11:25 20 You recall saying that?

21 **A.** Yes.

22 **Q.** Does that also relate to Mr. Zeleny openly
23 carrying firearms as well as ammunition? The same
24 issue; right?

11:25 25 **A.** Well, no. There's a different issue. There's

1 the public safety issue, and then there's the legal
2 issue.

3 Q. Okay.

4 So we've covered the public safety issue;
11:25 5 you've testified about -- what is the legal issue that
6 you're talking about?

7 A. It's against the law to openly carry weapons in
8 the state of California.

9 Q. And that's the case unless the person carrying
11:25 10 the weapons has the appropriate type of permit; true?

11 It's illegal to openly carry firearms except
12 that if you have a special events permit or a film
13 production permit, then it's legal; correct?

14 A. Well, there's many exceptions to the Penal Code
11:26 15 section.

16 Q. And those are two of them; right? An
17 authorized film production event?

18 A. Authorized film production; correct.

19 Q. And a special event -- and entertainment.

11:26 20 A. And an authorized entertainment event.

21 Q. Right. So if Mr. Zeleny had the special event
22 permit or the film permit from the City of Menlo Park,
23 it would no longer be illegal for him to carry his
24 firearm.

11:26 25 MR. MASTER: I subject it calls for a legal

1 conclusion, speculation.

2 But you can answer.

3 THE WITNESS: That's correct, but there are

4 controls that could be made by the City depending on any

11:26 5 permit that's issued.

6 Q. (By Mr. Robinson) What are those controls?

7 A. It depends on the permit.

8 Q. In what way does it depend on the permit?

9 A. It goes back to what we spoke of earlier;

11:27 10 depends on what they're asking, what they're

11 contemplating doing, and we have the right to deal with

12 time, place, and manner and public safety issues. It

13 could be that we'll only let you do this during certain

14 times of the day. You have to have police presence to

11:27 15 block off the street. There's -- it depends on what is

16 being contemplated.

17 Q. Those restrictions that you mentioned, are

18 there any criteria that you use to decide whether to

19 impose those types of restrictions? Things like police

11:27 20 presence or only certain times of day or -- what you're

21 referring to as time, place, and manner, are there

22 criteria that you use to decide whether to impose time,

23 place, and manner restrictions?

24 A. It would depend on what is being contemplated.

11:27 25 Q. Are there objective criteria?

1 event allowed noise. There are ordinances regarding
2 noise. There are ordinances regarding, you know,
3 blocking sidewalks, et cetera.

11:29 4 Q. Were any of those ordinances produced, to your
5 knowledge?

6 A. Not that I'm aware of.

7 Q. Are you aware of any other -- you're familiar
8 with Mr. Zeleny's permit application; right?

9 A. Yes.

11:29 10 Q. You were one of the people involved in
11 processing that application.

12 MR. MASTER: Talking about the special event
13 now?

14 MR. ROBINSON: Correct.

11:29 15 THE WITNESS: I was -- yes, I was involved in
16 examining the application.

17 Q. (By Mr. Robinson) And so you're aware of the
18 nature of the protest or the event that Mr. Zeleny was
19 contemplating in his application?

11:29 20 A. Yes.

21 Q. What municipal ordinances would apply, other
22 than the one relating to open carry of firearms?

23 MR. MASTER: Same objection. Lacks foundation,
24 calls for speculation. You can answer.

11:29 25 THE WITNESS: The ones I spoke about. We

1 proposed special event?

2 MR. MASTER: Can you read that back. I'm

3 sorry.

4 (Record read.)

11:32 5 THE WITNESS: The special events policy and
6 procedure.

7 Q. (By Mr. Robinson) Other than the special
8 events policy and procedure, are you aware of any other
9 municipal policies, procedures, rules, guidelines,
11:33 10 regulations, or any other municipal authority that was
11 implicated by Mr. Zeleny's protest -- his special event?

12 A. No.

13 Q. The special event policy is the policy listed
14 on the City's website and in the frequently asked
11:33 15 questions and on the application; right?

16 A. Correct.

17 Q. Is there any other written indication of the
18 City's special event policy, other than what's on the
19 website and the permit application?

11:33 20 A. Not that I'm aware of.

21 Q. So the entirety of the policy is the website,
22 the FAQ, the permit application itself, and this flow
23 chart?

24 A. Well, the website is just the medium in which
11:33 25 you access it. They're documents, but yes.

1 what criteria needed to be met in order for the -- for
2 the event to go on.

3 Q. How does the City of Menlo Park come up with
4 those criteria?

11:46 5 MR. MASTER: Objection. Asked and answered.

6 THE WITNESS: Again, it would depend on the
7 actual event; and going back to traffic impact, public
8 safety, crowd control, the -- everything else that I've
9 already talked about.

11:47 10 Q. (By Mr. Robinson) Are the criteria decided on
11 a permit-by-permit basis?

12 MR. MASTER: Objection. Asked and answered.

13 THE WITNESS: Yes.

14 MR. MASTER: At some point, I'm going to stop
11:47 15 this. He's answered that at least three or four times.

16 Q. (By Mr. Robinson) Looking at Exhibit 30 again,
17 Step D under the flow chart, it looks like if more
18 information is needed from the applicant, Matt Milde is
19 supposed to set up a meeting with the applicant; is that
11:47 20 accurate?

21 A. According to the document, yes.

22 Q. This is one of the City's published policies on
23 handling special events permits; right?

24 A. Yes.

11:47 25 Q. All right.

1 And it describes how the process is supposed to
2 work, right, in ordinary circumstances?

3 A. Yes.

4 Q. So if, after review by the City staff, it's
11:48 5 decided that more information is needed, then Matt Milde
6 or his successor sets up a meeting with the applicant;
7 correct?

8 A. Yes.

9 Q. Did the City ever set up a meeting with
11:48 10 Mr. Zeleny?

11 A. I'm not sure if a meeting was requested or the
12 more information requested was via e-mail.

13 Q. Who generally decides whether to request a
14 meeting? Is it the City or the applicant?

11:48 15 A. It would be the -- it could be either.

16 Q. In the general process, who, typically,
17 requests a meeting with the applicant?

18 MR. MASTER: Objection. Asked and answered.
19 It's vague and ambiguous.

11:48 20 Go ahead.

21 THE WITNESS: It would be the person who is
22 representing Community Services.

23 Q. (By Mr. Robinson) So it would typically be
24 Mr. Milde or his successor?

11:48 25 A. Yes.

1 **Q.** Do you know whether Mr. Milde or anyone else in
2 his role ever requested a meeting with Mr. Zeleny in
3 connection with the permit?

4 **A.** I don't recall if he requested a meeting or
11:49 5 stated they could meet or whether the e-mail that was
6 sent was the one requesting more information.

7 **Q.** Was there any reason, that you're aware of, to
8 request more information from Mr. Zeleny via e-mail as
9 opposed to setting up a meeting?

11:49 10 Was there any reason not to set up a meeting
11 with Mr. Zeleny that you're aware of?

12 **A.** Well, yes. My understanding is Mr. Milde said
13 that because he lived in Los Angeles, that it probably
14 would not be feasible to have an in-person meeting, and
11:49 15 it would be easier for Mr. Zeleny to do it via e-mail.

16 **Q.** Do you know whether anyone ever asked
17 Mr. Zeleny whether he'd like to attend a meeting?

18 **A.** At that time?

19 **Q.** Correct.

11:49 20 **A.** I don't know.

21 **Q.** Is there someone within the City who would
22 know?

23 **A.** Perhaps Mr. Milde, but he's no longer with the
24 City.

11:50 25 **Q.** Was -- in your experience, dealing with permit

1 applications -- strike that.

2 As the person most knowledgeable for the City
3 of Menlo Park about permit applications, is it typical
4 for the City to elect to correspond with the applicant
11:50 5 via e-mail as opposed to setting up a meeting.

6 MR. MASTER: Objection. Vague and ambiguous.
7 You can answer.

8 THE WITNESS: I think, in some cases, yes,
9 depending on where the applicant lives. And I know of
11:50 10 several where it was not done in person. But if the
11 person is local and it is convenient for them to meet in
12 person, then the meeting could be in person.

13 Q. (By Mr. Robinson) Okay.

14 To the best of your knowledge, the reason for
11:51 15 communicating with Mr. Zeleny via e-mail, rather than
16 setting up an in-person meeting was for Mr. Zeleny's
17 convenience?

18 A. Yes.

19 Q. Was Mr. Zeleny ever given a conditional
11:51 20 approval or conditional denial of his permit
21 application?

22 MR. MASTER: Objection. Compound. Vague and
23 ambiguous.

24 Q. (By Mr. Robinson) Was he ever given a
11:51 25 conditional approval of his permit application?

1 morning.

2 Q. Did you make a directive or recommendation to
3 Mr. Milde about whether to grant or deny the
4 application?

13:16 5 A. I said as far -- from the police department
6 perspective, from our department, that the -- as stated
7 or as the -- as the application was written, that it
8 should be denied.

9 Q. Do you know whether any other departments
13:16 10 indicated -- strike that.

11 Do you know whether any other departments
12 within the City suggested to Mr. Milde that the
13 application should be denied?

14 A. Yes. I understand that there was also concerns
13:16 15 from Transportation, which is in Public Works, regarding
16 the -- the issue.

17 Q. Are you aware of any departments, other than
18 police department and Transportation -- strike that.

19 The City Transportation Department is not one
13:17 20 of the City entities listed, is it?

21 A. PW means Public Works, so Public Works
22 engineering would be -- Transportation would be under
23 that.

24 Q. So the -- you, on behalf of the police
13:17 25 department, suggested that the application, in its

1 original form, be denied, and the Public

2 Works-Engineering department also suggested concerns; is

3 that accurate?

4 **A.** Correct.

13:17 5 **Q.** Other than those two City entities, are you
6 aware of any other entities that suggested that the
7 application be denied?

8 **MR. MASTER:** You mean departments.

9 **MR. ROBINSON:** City departments.

13:17 10 **Q.** (By Mr. Robinson) Are you aware of any
11 departments, other than those two, that suggested that
12 the application be denied?

13 **A.** Not necessarily denied, but there was others
14 that had concerns.

13:17 15 **Q.** In general, is it the process that the City
16 departments provide input, and then Mr. Milde, at that
17 time, at least, would make the ultimate decision?

18 **A.** Based on the department input, yes.

19 **Q.** If a department recommended that the permit be
13:18 20 denied, would that cause the permit to be denied?

21 **A.** In most cases, yes.

22 **Q.** Were you the primary person, at the time of
23 Mr. Zeleny's original application, responsible for the
24 application in the police department?

13:18 25 **A.** I shared that responsibility with Sergeant

1 Ortega, but, eventually, I became the primary person.

2 Q. Why was that?

3 A. He retired.

4 Q. At that time, did Sergeant Ortega report to
13:18 5 you?

6 A. At what time?

7 Q. At the time that Mr. Zeleny submitted his
8 application in 2015.

9 A. 2015? Yes.

13:19 10 Q. You were his boss?

11 A. Yes.

12 Q. The reasons that you suggested to Mr. Milde
13 that the application be denied are the same reasons we
14 discussed this morning; correct?

13:19 15 A. Correct.

16 Q. When, in the process in dealing with
17 Mr. Zeleny's permit application, did you refer it to the
18 city attorney?

19 A. Not quite sure exactly when I sent it, but I
13:19 20 think the -- I think by nature of Mr. Zeleny's mass
21 e-mail, it may have been right away, because I believe
22 he may have copied the city attorney.

23 (Exhibits 33 and 34 were marked for
24 identification.)

13:20 25 Q. (By Mr. Robinson) Let's start with Exhibit 33.

1 And I'm just going to ask you, for the record, it's
2 Bates marked MP1817 through 1821; correct?

3 A. Correct.

4 Q. Do you recognize Exhibit 33?

13:20 5 A. I do.

6 Q. What is it?

7 A. It is a Special Event Permit Application
8 Frequently Asked Questions that I spoke about earlier.

9 Q. When -- going to the first page of this, under

13:21 10 the heading "What Qualifies as a Special Event," when
11 you received Mr. Zeleny's special event permit
12 application, did you understand that it incorporated the
13 use of a city street, sidewalk, or other right-of-way?

14 A. Well, it was the median. I'm not sure that
13:21 15 would be considered a -- perhaps, maybe, the
16 right-of-way.

17 Q. You discussed before the potential of people
18 either obstructing the sidewalk or walking out --
19 jaywalking over the street to get to the median;
13:21 20 correct?

21 A. Correct.

22 Q. Both of those things would involve either the
23 use of a sidewalk or the use of a street; true?

24 A. Correct.

13:21 25 Q. So the permit application that Mr. Zeleny

1 submitted, in your view, would it satisfy the
2 requirement of use of a city street, sidewalk, or other
3 right-of-way?

4 A. Yes.

13:22 5 Q. We also talked about Mr. Zeleny's event being
6 for an indefinite duration. Do you recall that?

7 A. Yes.

8 Q. Did you understand, based on the application,
9 that Mr. Zeleny intended to stay at the site for

13:22 10 multiple days?

11 A. I did not know what his intent was, but it said
12 "indefinite."

13 Q. When you received it, did you understand the
14 reference to "indefinite" to refer to more than one day?

13:22 15 MR. MASTER: Objection. This lacks foundation.
16 Calls for speculation.

17 You can answer.

18 THE WITNESS: Indefinite means there's no
19 ending time. That's the definition of indefinite.

13:22 20 Q. (By Mr. Robinson) Okay.

21 So we're on the same page that interpreting the
22 term "indefinite," in your view, it means multiple days
23 with no fixed end day?

24 A. It means forever to me.

13:22 25 Q. Okay.

1 So if you go down to the second-to-last bullet
2 point, "Events occurring for more than one day,"
3 Mr. Zeleny's proposed event would satisfy that
4 criteria --

13:22 5 A. Yes.

6 Q. -- true?

7 It would require a permit on that basis; right?

8 A. Yes.

9 Q. You were familiar with Mr. Zeleny's protests
13:23 10 prior to his filing a permit application.

11 A. Yes.

12 Q. Those protests involved carrying of unloaded
13 firearms; correct?

14 A. In the past, yes.

13:23 15 Q. In your view, as an official with the Police
16 Department of the City of Menlo Park, did you believe
17 that a police presence was necessary during Mr. Zeleny's
18 previous protests?

19 A. Yes.

13:23 20 Q. Did you think a police presence was required
21 for the entertainment event or the special event that he
22 proposed putting on through his permit application?

23 A. If it was -- yes, there would have been a
24 police presence.

13:23 25 Q. So the last bullet point there, "Events needing

1 police regulation, monitoring, or control," in your
2 view, the event that Mr. Zeleny filed his application
3 for satisfied that criteria; correct?

4 A. Yes.

13:23 5 Q. So to summarize, at least three of these bullet
6 points would be triggered by Mr. Zeleny's proposed
7 special event permit; correct?

8 A. Yes.

9 Q. And under the definition set out in the FAQ, if
13:24 10 an event meets any one of these criteria, it qualifies
11 as a special event requiring a permit; true?

12 A. Requires you to complete a special event
13 application.

14 Q. Is the City -- is the definition in this FAQ of
13:24 15 what qualifies as a special event the City's definition
16 of a special event?

17 A. Yes.

18 Q. So under this -- at least under the published
19 FAQ, Mr. Zeleny's event would qualify as a special event
13:24 20 on at least three criteria; correct?

21 A. Yes.

22 Q. Let me have you turn to the page that's marked
23 MP1820. There's the section titled "What would cause a
24 permit to get denied?"

13:25 25 Do you see that?

1 **A.** Yes.

2 **Q.** Under that heading, are the criteria listed
3 some of the criteria that would be considered in
4 granting or denying a special event permit?

13:25 5 **A.** I'm sorry. Say that again.

6 **Q.** Are the criteria listed or the factors listed
7 under the heading "What would cause a permit to get
8 denied?" the factors that the City considers in deciding
9 whether to grant or deny a permit application?

13:25 10 **A.** Well, it's answering the question: What would
11 cause a permit to get denied? and gives some examples of
12 common factors why permits would be denied.

13 **Q.** Are the factors listed there, in your knowledge
14 and experience as the person most qualified on behalf of
13:25 15 the City, some of the factors that would cause a permit
16 to be denied?

17 **A.** Yes.

18 **Q.** Are there other factors?

19 **A.** Yes.

13:26 20 **Q.** What are the other factors?

21 **A.** Other factors would be those that had to deal
22 with already-in-place municipal codes, county
23 ordinances, state laws, federal laws, et cetera.

24 **Q.** Other than the factors listed here and
13:26 25 compliance with laws and regulations and ordinances, are

1 there any other factors that you're aware of that could
2 cause a permit to be denied?

3 A. From the police department's perspective,
4 public safety would also be a reason why it could be
13:27 5 denied.

6 Q. Does the police department determine, in
7 connection with permit applications, whether the
8 proposed event poses a risk to public safety?

9 A. Correct.

13:27 10 Q. Beyond public safety in general, are there any
11 specific criteria that you consider?

12 A. Other than what's been discussed, none that I
13 could recall right now.

14 Q. Other than the permit application itself and
13:27 15 this FAQ that we're looking at, are you aware of any
16 other written document available to the public that
17 lists the factors considered in granting or denial of an
18 application?

19 MR. MASTER: Objection. Asked and answered.

13:28 20 Go ahead.

21 THE WITNESS: There's the application itself on
22 the website, and what the website says itself, which I
23 see is Exhibit 34.

24 Q. (By Mr. Robinson) You anticipated my next
13:28 25 question. Exhibit 34 is two pages, MP1830 and 1831;

1 THE VIDEOGRAPHER: We are now going back on the
2 record. The time is 1:40 p.m.

3 Q. (By Mr. Robinson) Of the six and seven film
4 permit applications that you've been involved in, what
13:40 5 was the nature of -- strike that.

6 What was the reason that the police department
7 got involved?

8 A. The police department is always advised of a
9 film permit, but our involvement would occur if the film
13:41 10 production was a -- became a traffic issue, crowd
11 control issue, public safety issue.

12 Q. I assume that Mr. Zeleny's permit application
13 for a film permit was one of the ones in which the
14 police department got involved; is that correct?

13:41 15 A. The incomplete process, yes.

16 Q. When you say "the incomplete process," what do
17 you mean?

18 A. There has been no decision on a film permit as
19 of yet.

13:41 20 Q. What is the City's ordinary timeline for
21 granting or denying a film permit?

22 A. I don't know what the ordinary time limit is.

23 Q. How long has Mr. Zeleny's film permit
24 application been pending?

13:42 25 A. I would have to see the date of when he

1 **A.** There was -- my understanding -- my
2 recollection is that the last correspondence from the
3 Public Works Department asked for several -- asked
4 several questions and several mitigating factors of
13:45 5 Mr. Zeleny, which were never answered.

6 **Q.** Is there anything else, aside from the fact
7 that the City hasn't acted on the permit application and
8 the lack of answers to that last round of e-mail
9 questions, that makes the application incomplete?

13:45 10 **A.** I would argue that what you said about the City
11 not acting is not correct. We've acted. It's a two-way
12 street. We act, we ask questions, we expect a response,
13 and we have not yet received a response.

14 **Q.** Let me rephrase the question. Aside from there
13:45 15 not being an ultimate decision of whether to grant or
16 deny the application and the fact that Mr. Zeleny hasn't
17 responded to the last round of questions e-mailed to
18 him, is there anything else about the application that
19 makes it incomplete?

13:46 20 **A.** No. That pretty much makes it incomplete.

21 **Q.** The application itself is a form that you fill
22 out; correct?

23 **A.** Correct.

24 **Q.** Was the form filled out completely?

13:46 25 **A.** Actually, I don't believe he ever filled out a

1 specific form for a film permit. He just used the
2 special event permit and said "I would like this to now
3 be a film permit."

4 MR. ROBINSON: Why don't we mark this as

13:47 5 Exhibit 36.

6 (Exhibit 36 was marked for identification.)

7 Q. (By Mr. Robinson) For the record, Exhibit 36
8 is MP1248 through MP1253; correct?

9 A. Yes.

13:47 10 Q. Have you seen this document before?

11 A. Now that I see it in front of me, yes, I do
12 recall seeing it.

13 Q. It's one of the documents that the City
14 produced during discovery in this case; correct?

13:47 15 A. Correct.

16 Q. It's a film permit application; correct?

17 A. Correct.

18 Q. In review of this Exhibit 36, is there anything
19 about it that, in your view, is incomplete?

13:48 20 A. As far as this application itself?

21 Q. Correct.

22 A. No.

23 Q. This is the ordinary application that someone
24 would use to request a film permit from the City of
13:48 25 Menlo Park; correct?

1 **Q.** Are you still of the view that that animation
2 that we're talking about could be a violation of the
3 Penal Code if there were a child present and a
4 complaining victim? You still believe that?

14:02 5 **A.** It could be. That would be a -- that would be
6 a question of the Courts.

7 MR. ROBINSON: Why don't I ask that we mark
8 this as 37.

9 (Exhibit 37 was marked for identification.)

14:03 10 **Q.** (By Mr. Robinson) For the record, Exhibit 37
11 is two pages, MP5277 to 5278; correct?

12 **A.** Yes.

13 **Q.** Is this a copy of Penal Code 313.1 that was in
14 your file on Mr. Zeleny?

14:03 15 **A.** Yes.

16 MR. ROBINSON: And why don't we go ahead and
17 mark this as Exhibit 38.

18 (Exhibit 38 was marked for identification.)

19 **Q.** (By Mr. Robinson) For the record, Exhibit 38
14:04 20 is one page MP5282; correct?

21 **A.** Yes.

22 **Q.** This is another document that was contained in
23 your file on Mr. Zeleny; correct?

24 **A.** Yes.

14:04 25 **Q.** This is a still image of -- Exhibit 38 is a

1 still image of the animation that we've just been
2 talking about; right?

3 A. Correct.

4 Q. And was it your view, at the time that

14:04 5 Mr. Zeleny filed his permit application for a special
6 event permit, that the image reflected -- the animation
7 that's shown in Exhibit 38 could be obscene as to
8 minors?

9 A. It could be.

14:04 10 Q. Did you take that position in a public hearing
11 related to Mr. Zeleny's permit application?

12 A. Yes. I stated it could be.

13 Q. Do you have a view, one way or another, at this
14 point, about whether it is obscene as to minors or not?

14:05 15 A. It is actually -- as a police officer, I'm
16 unable to have my peace disturbed, nor be offended, so I
17 have no personal -- I have -- personally, I can't be
18 offended, so it would not be up to me whether it's
19 offensive or not. It would be up to a Court.

14:05 20 Q. When you say you can't be offended, what do you
21 mean?

22 A. In other words, I can't be the victim.

23 Q. Okay.

24 In your capacity as an individual witness, is
14:05 25 the image offensive? Not asking in your capacity as a

1 police officer, but as an individual witness in this
2 case, is the animation that's reflected in Exhibit 38
3 offensive?

4 MR. MASTER: Objection. Vague. Ambiguous.

14:05 5 Confusing. Overbroad. Calls for speculation.

6 If you can answer it.

7 THE WITNESS: For an adult, perhaps not; for a
8 child, yeah.

9 Q. (By Mr. Robinson) Have you received feedback
14:06 10 from anyone, either in the government in the City of
11 Menlo Park or the community of Menlo Park, that the
12 animation reflected in Exhibit 38 is offensive?

13 MR. MASTER: Same objection. Vague and
14 ambiguous.

14:06 15 THE WITNESS: No.

16 Q. (By Mr. Robinson) Do you personally find it
17 offensive?

18 MR. MASTER: Objection. Asked and answered.

19 Don't answer that.

14:06 20 We're done with this. He's already answered
21 that question.

22 MR. ROBINSON: You're instructing him not to
23 answer?

24 MR. MASTER: Absolutely.

14:06 25 Q. (By Mr. Robinson) Are you going to follow your

1 attorneys instruction not to answer?

2 A. Yes.

3 Q. In Mr. Zeleny's permit application process, you
4 acted as a spokesperson for the City in the hearing with
14:06 5 the city manager; correct?

6 A. For the special events permit?

7 Q. Correct.

8 A. Yes.

9 Q. And one of the issues that you raised in that
14:07 10 application process was that this image and the
11 associated animation might be obscene as to minors;
12 correct?

13 A. It could be, yes.

14 Q. Have you formed any view, in your capacity as
14:07 15 the Chief of Police of Menlo Park, about whether the
16 image is offensive?

17 MR. MASTER: Objection. Asked and answered.

18 Go ahead one more time.

19 THE WITNESS: As I stated, no.

14:07 20 Q. (By Mr. Robinson) Who would make the decision
21 about whether to charge Mr. Zeleny with obscenity as to
22 minors related to the animation?

23 A. District Attorney's Office.

24 Q. Is there someone in the City of Menlo Park that
14:07 25 would make a decision about whether to refer it for

1 prosecution?

2 **A.** Any police officer.

3 **Q.** Looking at **Exhibit 37**, in Clause A, there's a
4 reference to "harmful matter to the minor."

14:08 5 Do you see that?

6 **A.** Yes.

7 **Q.** What is your understanding of material that
8 would be considered harmful as to the minor? Is there
9 any more concrete definition than that?

14:08 10 MR. MASTER: Just object to the extent it calls
11 for a legal conclusion and speculation.

12 You can answer.

13 THE WITNESS: I believe if you were to look up
14 the jury instruction, there would be another definition
14:08 15 of that.

16 **Q.** (By Mr. Robinson) It refers to matter that is
17 summarized -- "invokes the prurient interests"; correct?

18 **A.** That's one of the criteria.

19 **Q.** But did the City of Menlo Park ever reach a
14:08 20 determination about whether the animation associated
21 with **Exhibit 38** appeals to a prurient interest?

22 **A.** That's -- that's not our purview. That's not
23 our job to do, so the answer is no.

24 MR. MASTER: Damion, is now a good time for a
14:09 25 break? We've been going about an hour.

1 MR. ROBINSON: Yeah.

2 MR. MASTER: Is now a good time?

3 THE VIDEOGRAPHER: We're now going off the
4 record. The time is 2:08 p.m.

14:20 5 (Recess taken from 2:08 p.m. to 2:20 p.m.)

6 THE VIDEOGRAPHER: We are now going back on the
7 record. The time is 2:20 p.m.

8 Q. (By Mr. Robinson) Was the possibility of

9 Mr. Zeleny's animation being obscene as to minors a

14:20 10 factor that was considered by the City in connection

11 with his special event permit application?

12 A. It did not come up until the appeal, because

13 that's when we were looking -- we found the animation

14 that he was proposing to use.

14:21 15 Q. And in the appeal process, was it considered a

16 factor in deciding whether or not to uphold the denial

17 of the permit application?

18 A. My understanding, that it was not one of the

19 denial points that was made by the city manager's

14:21 20 decision.

21 Q. It was a factor that was raised in the city

22 manager meeting; correct?

23 A. Yes.

24 Q. It was raised by you; right?

14:21 25 A. Yes.

1 **Q.** At the point that you raised it in that
2 meeting, you had not reached a determination about
3 whether it was actually obscene as to minors?

4 **A.** I cannot reach that determination.

14:21 5 **Q.** And you hadn't reached such a determination at
6 the time you raised it as a potential reason to uphold
7 the denial; correct?

8 MR. MASTER: Objection. Asked and answered.

9 THE WITNESS: I cannot make that determination.
14:22 10 That would have to be made by a jury.

11 **Q.** (By Mr. Robinson) I understand that you can't
12 make the determination. My question was whether, at the
13 time you raised it as a possible basis to uphold the
14 denial of Mr. Zeleny's permit application, you had no
14:22 15 view about whether it was or was not obscene as to
16 minors? I'm just trying to verify that that's accurate.

17 **A.** Yes.

18 **Q.** So you raised it as a basis to uphold the
19 denial, despite the fact you had no view about whether
14:22 20 it was obscene as to minors or not; correct?

21 **A.** I am -- it's not my purview to say whether it's
22 going to be obscene or not; it's a jury. But I raised
23 it as a factor for the city manager to consider.

24 **Q.** The reason that you raised it as a factor is
14:22 25 that you believed it was a factor that could support

1 affirming the denial of his permit application; correct?

2 A. That it could go towards the city manager's

3 decision-making process in the situation.

4 Q. Did you think it was a factor in favor of

14:23 5 granting him a special event permit?

6 A. No.

7 Q. Did you think it was a factor that potentially

8 weighed in favor of denying his special event permit

9 application?

14:23 10 A. Yes.

11 MR. MASTER: Sorry. It beeped, so I'm just

12 showing him the phone.

13 THE WITNESS: Okay. Thank you.

14 MR. ROBINSON: Okay.

14:23 15 Why don't we mark this as Exhibit 39?

16 (Exhibit 39 was marked for identification.)

17 Q. (By Mr. Robinson) For the record, Exhibit 39

18 is three pages, MP5141 through 5143; correct?

19 A. Yes.

14:24 20 Q. Do you recognize Exhibit 39?

21 A. I have seen it, yes.

22 Q. Is it part of your personal file on Mr. Zeleny?

23 A. Yes.

24 Q. Do you recognize it to be a printout of a

14:24 25 portion of Mr. Zeleny's website; true?

1 Q. What is the purpose of that investigative work?

2 A. They were instructed by their -- the detective

3 sergeant at the time to look into Mr. Zeleny's open

4 source and to attempt to determine his -- what his

14:26 5 motivations were to openly carry weapons in the city of

6 Menlo Park, and if there was any public safety issues

7 that we need to be concerned of, including threats;

8 things of that nature.

9 Q. To your knowledge, at any point in his

14:27 10 protests, has Mr. Zeleny committed a crime?

11 A. Yes.

12 Q. What crime did he commit?

13 A. He was, one time, prosecuted for possession of

14 a concealed weapon.

14:27 15 Q. Other than the prosecution for possession of a

16 concealed weapon, are you aware of any other occasion in

17 which -- in which Mr. Zeleny committed a crime in the

18 course of his protests?

19 A. Not that I am aware of.

14:27 20 Q. Would the answer to that change if I asked you

21 in your capacity as the person most knowledgeable for

22 Menlo Park? I want to make clear that we've exhausted

23 both your personal knowledge and the City of Menlo

24 Park's knowledge, having designated you as the person

14:27 25 most knowledgeable.

1 So in your individual capacity, are you aware
2 of any crime, other than the incident where Mr. Zeleny
3 was prosecuted for carrying a concealed weapon?

4 **A.** I am not aware of any other crime.

14:28 5 **Q.** And in your capacity as the person most
6 knowledgeable for Menlo Park, are you aware of any crime
7 that Mr. Zeleny committed during his protests, other
8 than the one incident where he was prosecuted for
9 carrying a concealed weapon?

14:28 10 **A.** No.

11 **Q.** Mr. Zeleny was acquitted of carrying a
12 concealed weapon; correct?

13 **A.** Yes.

14 **Q.** Your testimony, I take it, you disagree with
14:28 15 the acquittal?

16 **A.** I neither disagree nor agree.

17 **Q.** So aside from the time that Mr. Zeleny was
18 prosecuted and acquitted, you're not aware of any other
19 crime -- the incident that resulted in Mr. Zeleny being
14:28 20 prosecuted and acquitted is the only crime that you're
21 aware of that he ever committed in the course of his
22 protests.

23 MR. MASTER: Objection. Asked and answered.

24 THE WITNESS: That's the only incident where
14:29 25 probable cause arose to have a criminal Complaint filed.

1 Q. Who is that?

2 A. He's a sergeant.

3 Q. Within the Menlo Park Police Department?

4 A. Yes.

14:31 5 Q. And who is Timothy Brackett?

6 A. He's a sergeant in the Menlo Park Police
7 Department.

8 Q. This e-mail relates to Mr. Zeleny; correct?

9 A. Yes.

14:32 10 Q. In the -- I guess it's the third e-mail down
11 the chain, so the very bottom e-mail, there's a
12 reference to Mr. Zeleny's mother passing away and, to
13 summarize, that potentially triggering him to conduct
14 more protests.

14:32 15 Do you see what I'm talking about?

16 A. Yes.

17 Q. How did the City of Menlo Park get the
18 information that Mr. Zeleny's mother had passed away?

19 A. From the head of security at NEA.

14:32 20 MR. MASTER: Mr. Zeleny, I'd appreciate it if
21 you could be quiet during the deposition. Thank you.

22 Q. (By Mr. Robinson) Do you know how the head of
23 security of NEA got that information?

24 A. No.

14:32 25 Q. Were you aware that NEA was conducting

1 surveillance on Mr. Zeleny?

2 A. Yes.

3 Q. How did you become aware of that?

4 A. The head of security advised me.

14:33 5 Q. What type of surveillance was NEA conducting on
6 Mr. Zeleny?

7 A. My understanding was it was open source, and
8 that sometimes physical surveillance.

9 Q. To your knowledge, how long did that go on?

14:33 10 A. I don't know.

11 Q. In the 2013 -- let's start at 2012 to 2013.

12 You worked with the City of Menlo Park; correct?

13 A. Correct.

14 Q. How often did you communicate with
14:33 15 representatives of NEA during that time period about
16 Mr. Zeleny?

17 A. Only around the times of his protests.

18 Q. Let's say in the two years, 2012 and 2013,
19 estimate how many times you met with or communicated
14:33 20 with representatives of NEA?

21 A. I'd say maybe four or five times.

22 Q. The bottom e-mail in Exhibit 40 describes a
23 meeting with representatives of NEA.

24 Do you see that?

14:34 25 A. Yes.

1 in order to investigate a crime, we have to have a
2 complaining victim, someone to come forward and tell us
3 that they were a victim of a crime, and then we would,
4 in fact, do that. At this point, this alleged victim
14:46 5 has not come forward, has not made any police reports
6 that I know of anywhere, and definitely not at Menlo
7 Park PD.

8 MR. ROBINSON: Why don't we mark this as
9 Exhibit 41.

14:46 10 (Exhibit 41 was marked for identification.)

11 Q. (By Mr. Robinson) For the record, Exhibit 41
12 is one page, MP261; correct?

13 A. Yes.

14 Q. Do you recognize it?

14:47 15 A. I do.

16 Q. Is it an e-mail from you to a representative of
17 NEA?

18 A. Yes.

19 Q. Could you just pronounce the gentleman's name.

14:47 20 A. It's Dave Tresmontan, T-r-e-s-m-o-n-t-a-n.

21 Q. In Mr. Tresmontan's e-mail, he's asking you
22 about your -- at the bottom of the page, he's asking you
23 about your availability for a meeting regarding Zeleny.

24 Do you see that?

14:47 25 A. Yes.

1 Q. Do you recall a discussion about setting up a
2 meeting in the July 2015 time frame about Mr. Zeleny?

3 A. Yes.

4 Q. What was the context of that meeting? Why were
14:47 5 you setting it up?

6 A. This was a meeting that included numerous
7 stakeholders dealing with Mr. Zeleny in case he were to
8 resume his armed protests and included numerous
9 government and non-government stakeholders.

14:48 10 Q. NEA was among the non-government stakeholders?

11 A. Yes.

12 Q. In your experience with the City of Menlo Park,
13 how many times have you met with a group of government
14 and non-government stakeholders about an issue related
14:48 15 to your work as a police officer?

16 A. Numerous.

17 Q. What types of issues do you generally meet with
18 with non-government stakeholders?

19 A. It could -- it varies anywhere from
14:48 20 homelessness to issues with traffic around certain
21 locations. It runs the gamut of different concerns that
22 people have where we would meet with government and
23 non-government officials.

24 Q. Have you ever met with government and
14:48 25 non-government officials about a protest, other than

1 **A.** I was going to read the document.

2 **Q.** Go ahead and read it.

3 **A.** "Photographs and videos will not be used or

4 retained for the sole purpose of collecting or

15:06 5 maintaining information about the political, religious,

6 or social views of associations or the activities of any

7 individual, group, association, organization,

8 corporation, business, or partnership unless such

9 information directly relates to an investigation of

15:06 10 criminal activities and there is reasonable suspicion

11 that the subject of the information is involved in

12 criminal conduct."

13 **Q.** Is the City currently investigating Mr. Zeleny

14 for criminal activity?

15:07 15 **A.** Not currently investigating him, no.

16 **Q.** Other than the concealed carry issue for which

17 Mr. Zeleny was acquitted, did the City ever investigate

18 Mr. Zeleny for criminal activity?

19 **A.** No.

15:07 20 **Q.** Other than that issue related to the concealed

21 carry for which Mr. Zeleny was acquitted, did the City

22 ever have a reasonable suspicion that he was engaged in

23 criminal conduct?

24 **A.** No.

15:07 25 **Q.** Does maintaining a file on Mr. Zeleny, despite

1 attempting to come to a conclusion with as far as his
2 second permit.

3 Q. Part of your answer related to Mr. Zeleny
4 asserting that he has the right to engage in the
15:30 5 protests without -- or to engage in an entertainment
6 event or to film his protests as part of a video
7 production without the City's authorization; is that
8 accurate?

9 A. That is my understanding of what he has alleged
15:30 10 or he has said.

11 Q. As the person most qualified on behalf of the
12 City of Menlo Park, is he correct in that assertion?

13 A. In the assertion -- no; that he can't -- hold
14 on.

15:30 15 Go back and tell me the assertion again.

16 Q. Sure. Is it accurate that Mr. Zeleny can
17 engage in his activities with unloaded firearms without
18 some kind of permit from the City?

19 A. That is not correct.

15:30 20 Q. Okay.

21 So you disagree with his assertion?

22 A. That's correct.

23 Q. And assuming that he did that, we've talked
24 about this before, and I don't want to belabor it.

15:30 25 Assuming that he did that, he would be subject to

1 prosecution?

2 A. He may be subject to arrest and prosecution.

3 Q. And if I understood you correctly, Mr. Zeleny
4 is manipulating the process by applying for the permits;
15:31 5 is that correct?

6 A. Yes.

7 Q. Okay.

8 So the City disagrees with him -- strike that.

9 In the City's view, Mr. Zeleny needs the

15:31 10 permits in order to use the guns in the protests -- in
11 the entertainment event, the protests, the video,
12 whatever it is, he needs a permit; correct?

13 A. In order for the exception to be applicable, he
14 has to be involved in a permitted activity, yes.

15:31 15 Q. And in your view, Mr. Zeleny is manipulating
16 the process by applying for the permits he needs to
17 engage in that activity?

18 A. Based on his own words, yes.

19 Q. Going on to the next paragraph in Exhibit 44,
15:32 20 there is a reference to continuing to be in close
21 contact with security from NEA.

22 Do you see that?

23 A. I do.

24 Q. Do you have an understanding of how -- for what
15:32 25 period of time the City of Menlo Park was in contact

1 Mr. Zeleny having a firearm and being compliant with a
2 request to check whether it was loaded; correct?

3 A. Yes, a 12-gauge shotgun.

4 Q. Based on that paragraph, Mr. Zeleny was also
15:35 5 cooperative with officers' requests to inspect his
6 weapon; true?

7 A. Based on the report, yes.

8 Q. In any of your experience with Mr. Zeleny, has
9 he been anything other than cooperative with officers'
15:36 10 requests to inspect his firearms?

11 A. No.

12 Q. Has he been uncooperative with officers in any
13 way, to your knowledge?

14 A. Not to my knowledge.

15:36 15 Q. Going down to the next paragraph, second up
16 from the bottom, is a reference to a bagpiper.

17 And my question is: It appears, based on the
18 report, that Mr. Zeleny cooperated with the officers'
19 request to relocate the bagpiper so that the noise was
15:36 20 at an acceptable level; correct?

21 A. Yes.

22 Q. And in the next paragraph, Mr. Zeleny
23 cooperated with a request to have a trumpet player play
24 music at an acceptable level; true?

15:36 25 A. Yes.

1 MR. ROBINSON: Let's go on to Exhibit 47.

2 (Exhibit 47 was marked for identification.)

3 Q. (By Mr. Robinson) For the record, Exhibit 47
4 is three pages, MP1871 through 1873; correct?

15:37 5 A. Correct.

6 Q. Do you recognize Exhibit 47?

7 A. It's a Menlo Park Police report.

8 Q. It is one of the documents collected and
9 produced in this lawsuit by the City of Menlo Park;

15:37 10 true?

11 A. Yes.

12 Q. And in the narrative section of this police
13 report, it discusses an inspection of one of
14 Mr. Zeleny's firearms; correct?

15:38 15 A. Again, this was a year before I was employed
16 with the Menlo Park Police Department, but yes, it does.

17 Q. And in this report, the officer notes that
18 Mr. Zeleny voluntarily offered to allow the officer to
19 inspect his firearm; correct?

15:38 20 A. Yes, a shotgun.

21 Q. And the officer apparently thanked Mr. Zeleny
22 for his cooperation.

23 A. According to the police report, he did.

24 Q. Is that consistent with your understanding of

15:38 25 Mr. Zeleny's behavior throughout his protests; that he

1 was cooperative with the requests made by police
2 officers?

3 A. Yes.

4 Q. His cooperation included the location of
15:39 5 various parts of his protest; right?

6 A. In the one case that I read, yes.

7 Q. And it also included cooperation regarding
8 inspection of his firearms; true?

9 A. Yes.

15:39 10 MR. ROBINSON: Let's mark this as 48, please.

11 (Exhibit 48 was marked for identification.)

12 Q. (By Mr. Robinson) For the record, Exhibit 48
13 is multiple pages, MP61 through 65; correct?

14 A. Yes.

15:40 15 Q. Do you recognize Exhibit 48?

16 A. It is an e-mail with a daily police log
17 attached.

18 Q. And this is an e-mail that you would have
19 received in your capacity as -- strike that.

15:40 20 In February of 2012, what was your title with
21 the Menlo Park Police Department?

22 A. Patrol commander.

23 Q. Okay.

24 Did you receive this e-mail and attachment in
15:40 25 that capacity on the date listed here?

1 under problem-solving; could have been put under other
2 parts. It's really not formal as to where it goes.

3 **Q.** Was Mr. Zeleny's protest considered a problem
4 by the City of Menlo Park in 2012?

15:42 5 **A.** Yes.

6 **Q.** Why was it considered a problem?

7 **A.** Because, as it states here, both subjects were
8 wearing military style uniforms, Level 3A tactical
9 vests, one with a ceramic trauma plate. The rifles
10 carried by the subjects were M1A type .308 caliber, and
11 they each had several loaded ten-round magazines on
12 their person but not loaded in the rifles.

13 That is why it was a problem for the Menlo Park
14 Police Department.

15:43 15 **Q.** What about that is a problem?

16 **A.** These two men were a public safety concern,
17 both because of the fact that, very easily, they could
18 load those weapons and become active shooters, number
19 one.

15:43 20 Number two, they created a visual hazard for
21 people who are passing by. And both men put themselves
22 in very dangerous, precarious positions, because if a
23 passerby saw these men in the society we live in today,
24 with active shooters and mass shootings permeating the
15:43 25 world, that a person who happened to have a gun legally

1 may consider them a threat, and who knows what could
2 have happened.

3 So, yes, this was a problem.

4 Q. At the time that the City -- in the 2012 time
15:43 5 frame, when the City of Menlo Park apparently considered
6 Mr. Zeleny's activities a problem, Mr. Zeleny was not
7 doing anything illegal; correct?

8 A. No, he was not doing anything illegal.

9 Q. He was exercising his constitutional right to
15:44 10 bear arms; true?

11 A. Certainly.

12 Q. And Mr. Zeleny's exercise of his constitutional
13 right to bear arms was a problem for the City of Menlo
14 Park?

15:44 15 MR. MASTER: Objection. Argumentative. Asked
16 and answered.

17 THE WITNESS: It caused a public safety issue.

18 Q. (By Mr. Robinson) So his exercise of his
19 constitutional right to bear arms was a problem for the
15:44 20 City of Menlo Park because, in your view, it created a
21 public safety issue; is that accurate?

22 A. That is accurate.

23 MR. ROBINSON: Let's take a look at Exhibit 49.

24 (Exhibit 49 was marked for identification.)

15:46 25 Q. (By Mr. Robinson) Do you recognize Exhibit 49?

1 **A.** I do.

2 **Q.** The officer notes, again, that Mr. Zeleny was
3 very cooperative.

4 Do you see that?

16:00 5 **A.** I do.

6 **Q.** That's consistent with your understanding of
7 Mr. Zeleny's behavior during all of his protests.

8 **A.** Certainly.

9 MR. ROBINSON: Why don't we mark this as
16:01 10 Exhibit 51, please.

11 (Exhibit 51 was marked for identification.)

12 **Q.** (By Mr. Robinson) Exhibit 51 is multiple pages
13 from MP206 to 210; correct?

14 **A.** Correct.

16:02 15 **Q.** Do you recognize Exhibit 51?

16 **A.** I do.

17 **Q.** What is it?

18 **A.** It is the minutes from a management -- police
19 management staff meeting on August 7th, 2012.

16:02 20 **Q.** You attended that meeting; correct?

21 **A.** I did.

22 **Q.** If you could turn to Page 210, please. There
23 is a reference to Zeleny.

24 Do you see where I'm referring to, middle of
16:02 25 the page?

1 to working collaboratively with NEA and Mr. Zeleny, as
2 well as contact with the legal counsel of NEA; is that a
3 fair characterization?

16:11 4 MR. MASTER: Objection. Document speaks for
5 itself.

6 THE WITNESS: The originating e-mail on this
7 thread is from Chief Brian Roberts to Glen Rojas,
8 R-o-j-a-s, who was the city manager at that time. CC'ed
9 on this e-mail are Sergeant Sharon Kaufman and, at that
16:11 10 time, Commander Lacey Burt, and it does speak about a
11 protest Mr. Zeleny did. I assume -- sorry.

12 It's dated on the 28th, and that the chief
13 states that NEA is aware of the latest developments and
14 that they have -- and that the police department and NEA
16:12 15 have participated in conference calls with their legal
16 counsel.

17 Q. (By Mr. Robinson) Is it accurate, in your
18 experience, that the Menlo Park Police Department has
19 worked collaboratively with NEA in connection with
16:12 20 Mr. Zeleny's protests?

21 MR. MASTER: Object. Can you just read that
22 back. I'm sorry. I missed it.

23 (Record read.)

24 THE WITNESS: We have -- as a stakeholder, we
16:12 25 have worked with them. I'm not sure. It depends on

1 what your definition of "collaboratively" is. We have,
2 in fact, as a stakeholder and as the organization that
3 is the focus of Mr. Zeleny's protests, they have asked
4 us for assistance, and they are a business in our city,
16:13 5 so we provided assistance.

6 Q. (By Mr. Robinson) In your time at the City of
7 Menlo Park Police Department, what has the City done to
8 work collaboratively with NEA as a stakeholder?

9 MR. MASTER: Objection. Vague and ambiguous.

16:13 10 Overbroad.

11 You can answer.

12 THE WITNESS: We have responded to their
13 requests when Mr. Zeleny has shown up armed and
14 protesting. We have met with them, when they have had
16:13 15 concerns, to address their concerns about the safety
16 issues with the armed protests. We have invited them to
17 be in the meeting with all the stakeholders regarding
18 Mr. Zeleny's protests and answering any questions that
19 we legally could of them.

16:14 20 Q. (By Mr. Robinson) You've met personally with
21 NEA, true, in connection with Mr. Zeleny's protests?

22 A. Well, NEA is a company.

23 Q. Thank you.

24 You've met personally with representatives of

16:14 25 NEA in connection with Mr. Zeleny's protests; true?

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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MICHAEL ZELENY,

Plaintiff,

vs.

Case No. CV 17-7357 JCS

GAVIN NEWSOM, et al.,

Defendants.

_____/

Pages 278 - 286 ARE CONFIDENTIAL

AND BOUND SEPARATELY

Pages 310 - 324 ARE CONFIDENTIAL

AND BOUND SEPARATELY

CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

BY VIDEOCONFERENCE

(Volume II - Pages 229 to 534

Taken before DENISE M. LOMBARDO, CSR No. 5419

RPR, RMR, RDR, CRR

August 7, 2020

1 A. Yes.

2 Q. Okay. Are there any ordinances governing
3 film permits that you're aware of?

4 A. I'm not aware of any specific ordinances
5 governing film permits. 10:11

6 Q. Would the film permitting process also be
7 governed by the written materials, including the
8 film permit guidelines?

9 A. Yes.

10 Q. In the last deposition, we talked about 10:11
11 whether there were written policies for the various
12 departments regarding approval or denial of special
13 events permits.

14 Do you recall that?

15 A. I do. 10:12

16 Q. Have you identified any other written
17 policies for the approval or denial of special
18 events permits, other than the ones we went over
19 last time?

20 A. There are no other written policies or 10:12
21 procedures.

22 Q. Could you identify any criteria that are
23 not identified in the written policies, criteria
24 for approval or denial?

25 MR. MASTER: I'll just object. Vague and 10:12

1 ambiguous and overbroad.

2 You can answer.

3 THE WITNESS: You are speaking of the
4 special events permit process --

5 MR. ROBINSON: Correct. 10:12

6 THE WITNESS: -- or the film? Okay.

7 The special events. The -- the criteria are on the
8 FAQs and they're on the application. What the city
9 is really looking for is dealing with time, manner
10 and place, essentially, and what -- the criteria 10:13
11 that are listed are the things that we are looking
12 for.

13 BY MR. ROBINSON:

14 Q. So you mentioned time, manner and place.

15 Let's start with time. What are the time 10:13
16 limitations on a special event?

17 A. That would depend on what kind of event is
18 being contemplated. I think I testified to that
19 prior. It really depends on what kind of event is
20 being contemplated. If there is an event at, for 10:13
21 instance, say, 3:00 o'clock in the morning that's
22 going to create a lot of noise, that probably would
23 be a time that we would have some issues with and
24 may want to work with the person who is requesting
25 that event. So time is a -- one of the things that 10:13

1 we would look at.

2 Q. Is there a schedule of hours where special
3 events are allowed?

4 A. I'm not aware of any set schedule of
5 hours. 10:13

6 Q. Are there time limits on the length of
7 time a special event can last?

8 A. I'm not aware of anything that is written
9 about time limits.

10 Q. Are you aware of any unwritten policy 10:14
11 about time limits?

12 A. No. I think it would be up to the City to
13 determine whether or not a permitted event, if it
14 were to be contemplated to go on, let's say,
15 indefinitely, that perhaps there would be some 10:14
16 issue with that that we would want to discuss with
17 the permit requester.

18 Q. Is the appropriate time limit for an event
19 considered on a case-by-case basis?

20 A. Correct. 10:14

21 Q. Let's talk about place. That was the
22 second item. What -- is there any written policy
23 about the place for special events?

24 A. Not specifically about places that are
25 disallowed or allowed, but there are criteria 10:14

1) for -- if you're going to do it in a place that is
2) going to create a traffic hazard, there would need
3) to be mitigation involved. There may be extra
4) insurance that's necessary. So the place is
5) something else that is a criteria that is looked 10:15
6) at, but it's also listed on the application.

7) Q. What places would create a traffic hazard?

8) MR. MASTER: Vague and ambiguous and
9) overbroad.

10) Go ahead. 10:15

11) BY MR. ROBINSON:

12) Q. Let me clarify that. In connection with
13) the place requirements for a special events permit,
14) are there any places within the city that are
15) specifically allowed or disallowed for special 10:15
16) events?

17) MR. MASTER: Objection. Vague and
18) ambiguous and overbroad.

19) Go ahead.

20) THE WITNESS: I believe I've answered 10:15
21) that. I said there is no list of places where it's
22) disallowed or allowed. But it is something --
23) depending on the location that is requested or that
24) is being contemplated, the place does -- does
25) matter when it comes to, you know, the permitting 10:15

1 process.

2 BY MR. ROBINSON:

3 Q. How do you determine at the City of Menlo
4 Park whether a special event creates or could
5 potentially create a traffic hazard? 10:16

6 A. Well, it would be common sense. If the
7 requestee is requesting the special event to occur
8 down El Camino Real or some other major
9 thoroughfare, that's going to create traffic. We
10 historically know what our traffic flows are, which 10:16
11 streets are busier than others and have more
12 traffic issues on them. So it would be based on
13 the location contemplated and, also, our experience
14 with that location.

15 Q. And focusing on the first layers, not the 10:16
16 appellate layers but the first layer of the special
17 event permit process, who decides whether the event
18 creates a traffic hazard?

19 A. Well, that would be a combined opinion
20 with both the public works/transportation 10:16
21 department, public works planning and the police
22 department. And that would be a recommendation
23 back to the community services person, who is in
24 charge of the permitting process, to say these are
25 the issues that we would have with this permit as 10:17

1 it is requested, and we would request some
2 mitigation for those issues.

3 Q. Are there any traffic increases or
4 traffic -- strike that.

5 Is there a particular volume of traffic 10:17
6 interference that would be required to have a
7 permit denied?

8 A. I couldn't answer that question. I have
9 no idea what that -- there's no -- there's no
10 criteria for -- if it's -- that's like saying if 10:17
11 traffic is disrupted 20 percent, it's no good.
12 That doesn't make any sense. I don't know how to
13 answer that.

14 Q. The traffic hazard factor, is that also
15 determined case by case? 10:18

16 A. Well, yes. It would be dependent upon
17 where -- the place that is contemplated in the
18 application.

19 Q. Okay. The last thing you mentioned was
20 manner restrictions. What are manner requirements? 10:18
21 What are the criteria for determining whether the
22 manner of a special event is appropriate?

23 A. Certainly. I think I testified to this a
24 year ago, also.

25 The manner would be, as long as all 10:18

1 applicable laws are being followed, whether they're
2 local, state, federal laws, are being followed. So
3 the manner in which this would occur. Make sure
4 there are safety considerations. If there are --
5 if there's a danger of someone perhaps getting 10:18
6 injured, that there's safety. Then there's
7 sanitation. There are -- there are criteria for
8 that. So that would be the manner criteria.

9 Q. And those criteria that you mentioned,
10 following up with applicable laws, safety 10:19
11 considerations, sanitation considerations, is there
12 a written list of factors anywhere?

13 A. Those are actually --

14 Q. Sorry. Go ahead.

15 THE REPORTER: Excuse me. Excuse me. 10:19

16 MR. ROBINSON: Let me start again.

17 THE REPORTER: Mr. Master, your last
18 statement, I couldn't hear it. And I'm getting
19 interference from Mr. Robinson's line. It's not
20 exactly clear. Go ahead. 10:19

21 BY MR. ROBINSON:

22 Q. Let me rephrase the question.

23 Is there any written list of the manner
24 requirements for a special event permit?

25 A. There are some of the manner requirements 10:20

1 that are reflected in the application dealing with
2 crowd control, sanitation, you know, noise. Those
3 type of manner restrictions are, in fact, on the
4 application process, but it is a case-by-case
5 basis. 10:20

6 Q. So under the general category of safety
7 considerations, would the safety considerations
8 vary based on the type of event?

9 A. Yes.

10 Q. Is there a standard time limit in place 10:20
11 for approval or denial of a special events permit?

12 A. There is a general timeline in place, but,
13 again, as I think I've testified before, that would
14 depend on the specific situation and the specific
15 application that's being contemplated. 10:21

16 Q. Is there any -- is there any mandatory
17 time limit on how long it takes to process a
18 special event application?

19 A. Not that I'm aware of, no.

20 Q. Why don't we mark this as Exhibit 250. 10:21
21 (Plaintiff's Exhibit 250 marked
22 for Identification.)

23 MR. ROBINSON: Does everyone have access to
24 the document share?

25 THE WITNESS: This folder says "empty." 10:21

1 application that you discussed?

2 A. As I sit here today, I don't recall
3 exactly what was discussed. There was an overall
4 discussion about the application.

5 Q. And did the chief at that time give you 10:47
6 any directions about what to do regarding the
7 application?

8 A. The only direction he gave me is to handle
9 it.

10 Q. Okay. What did you do after that with 10:48
11 respect to the application?

12 A. Again, I don't recall exactly what I did
13 after that. I know eventually, I had a discussion
14 with Matt Milde, who was the coordinator at the
15 time, and Sergeant Kaufman, who was a special 10:48
16 events sergeant at the time, to discuss the
17 application.

18 Q. In general terms, what did you talk about
19 with Sergeant Kaufman and Mr. Milde?

20 A. We just discussed what was being 10:48
21 contemplated and how we would go about trying to
22 get the information that we needed and also deal
23 with some of the -- on its face, the application
24 presented some safety concerns, whether it was the
25 traffic safety, public safety. Those are the 10:49

1 Q. If you could please turn to the page that
2 has the caption "Verification," near the very end
3 of the document.

4 A. Okay.

5 Q. Is that your signature? 10:55

6 A. It is.

7 Q. You reviewed this document before you
8 signed it?

9 A. I did.

10 Q. Let's go to page 3, please. Actually, 10:55
11 let's start on page 2 and carrying over to page 3.
12 There's interrogatory No. 1 and supplemental
13 response to interrogatory No. 1. Read those, if
14 you would.

15 A. (Witness complying.) 10:56

16 Q. I want to focus on the paragraph that
17 starts: "In addition, the City has recently
18 discovered." Do you see that?

19 A. I do.

20 Q. How did the City discover that it never 10:56
21 had legal authority to issue a permit?

22 A. I'm not -- I'm not 100 percent sure. My
23 understanding, from discussions with the city
24 attorney's office --

25 MR. MASTER: Hold on. If they're 10:56

1 discussions with the city attorney's office, then
2 it's attorney-client-privileged communication. If
3 you have any understanding outside of what you've
4 been told by an attorney, you're certainly entitled
5 to answer. 10:57

6 THE WITNESS: Then I have no -- nothing
7 else, aside from what I was discussing with the
8 city attorney.

9 BY MR. ROBINSON:

10 Q. All right. Let's -- taking that paragraph 10:57
11 as a whole that discusses the City's legal
12 authority and ownership of the median, do you have
13 any basis for knowledge about that -- the
14 information in that paragraph, other than what
15 you've been told by an attorney? 10:57

16 A. No.

17 Q. For purposes of our record, Chief Bertini,
18 what were you told by an attorney concerning that
19 information?

20 MR. MASTER: Again, just for the record, 10:57
21 you're asking Chief Bertini to disclose what he was
22 told by the city attorney's office, the city
23 attorney being the attorney for the City and the
24 staff. Therefore, it calls for him to disclose
25 attorney-client-privileged communications, and I'll 10:58

1) instruct him not to answer.

2) MR. ROBINSON: I didn't quite hear you,

3) Todd. Are you instructing him not to answer?

4) MR. MASTER: Yes.

5) BY MR. ROBINSON: 10:58

6) Q. Chief Bertini, are you going to follow

7) your attorney's instruction not to answer?

8) A. I am.

9) Q. As the chief of police of the City of

10) Menlo Park, are Menlo Park police officers 10:58

11) authorized to enforce the laws on that median strip

12) on Sand Hill Road?

13) A. Yes.

14) Q. Does the city police department have

15) jurisdiction over the median strip on Sand Hill 10:58

16) Road?

17) MR. MASTER: Objection. Calls for a legal

18) conclusion. Vague and ambiguous.

19) You can answer.

20) THE WITNESS: The City of Menlo Park has 10:59

21) jurisdictional boundaries, but to be technical with

22) you, Counselor, police officers in the state of

23) California can actually use their police power

24) anywhere in the state. So, yes, they have police

25) power over that median. 10:59

1 BY MR. ROBINSON:

2 Q. If Mr. Zeleny goes out and protests on the
3 median strip on Sand Hill Road with unloaded
4 firearms, is he subject to arrest by the Menlo Park
5 Police Department? 10:59

6 MR. MASTER: Objection. Vague and
7 ambiguous and overbroad. Incomplete hypothetical.
8 Calls for a legal conclusion.

9 Go ahead.

10 THE WITNESS: The situation would be 10:59
11 assessed by whatever law enforcement entity was
12 called, whether it was the Menlo Park Police
13 Department, the CHP, the California Highway Patrol,
14 or the San Mateo County Sheriff's Office. And an
15 assessment would be made, and if there was probable 10:59
16 cause to make an arrest, then an arrest could be
17 made.

18 BY MR. ROBINSON:

19 Q. If the City of Menlo Park Police
20 Department were called and went to the median strip 11:00
21 on Sand Hill Road that's referenced in your
22 interrogatory response and observed Mr. Zeleny
23 openly carrying an unloaded firearm as part of a
24 protest, would he be subject to arrest?

25 A. As I stated, any agency -- any police 11:00

1 agency would be able to assess the situation, and
2 if probable cause was present to make an arrest, an
3 arrest could be made.

4 Q. The median strip that's referred to in
5 your response to interrogatory No. 1, it's within 11:00
6 the city limits of Menlo Park; correct?

7 A. That is my understanding.

8 Q. Let me go ahead and mark as Exhibit 252 --
9 (Plaintiff's Exhibit 252 marked
10 for Identification.)

11 BY MR. ROBINSON:

12 Q. For the record, Exhibit 252 is a
13 multiple-page document. It looks like it starts at
14 MP 6656 and carries through to MP 6673; is that
15 correct? 11:01

16 A. It's still loading up on my computer.
17 Exhibit 252?

18 Q. Correct.

19 A. And what were the numbers you said it went
20 from? 11:02

21 Q. MP 6656 through -- I'm sorry. Let me
22 start that again. MP 6656 through MP 6673.

23 A. Okay. I have it now.

24 Q. Do you recognize this?

25 A. I do not. 11:02

1 he had committed a crime?

2 A. As I've stated, Counselor, we never
3 arrested him for a crime.

4 Q. Did the officers ever report that a crime
5 had occurred? 11:37

6 A. No.

7 Q. Do you recall the officers reporting on
8 multiple occasions that no crime had occurred?

9 A. I'm not sure they used those words, so I
10 would say no. 11:37

11 Q. Do you recall officers reporting on
12 various occasions that Mr. Zeleny was cooperative?

13 A. That, I recall, yes.

14 Q. Was Mr. Zeleny cooperative consistently
15 during his protest until the time that he was 11:37
16 prosecuted?

17 A. From my understanding, based on what the
18 officers reported, yes.

19 Q. Let's go ahead and mark another exhibit.
20 So this one has been previously marked. So I'm 11:38
21 just going to move it to the "Marked Exhibits"
22 folder.

23 Chief Bertini, could you open up in the
24 "Marked Exhibits" folder -- the file name is
25 101004 - Police Report - Cooperation. It's a 11:38

1 A. I -- not to my recollection. I know there
2 were some statements that he made that had the air
3 of possibly being angry and having -- and making a
4 threat, but as I sit here today, I can't recall
5 specifically. 11:41

6 Q. Can you estimate how many times Mr. Zeleny
7 protested in Menlo Park, during your tenure there,
8 with unloaded weapons?

9 A. I would estimate approximately 10, 10 to
10 15. 11:41

11 Q. And that was over the course of a couple
12 of years; right?

13 A. Correct.

14 Q. During those 10 or 15 protests over the
15 course of a couple of years, was Mr. Zeleny ever 11:42
16 violent?

17 A. Not that I'm aware of.

18 Q. Did he ever threaten anyone during the
19 protest?

20 A. Aside from the statements that I just made 11:42
21 about some statements that were made in -- either
22 angry or threatening in some way, no.

23 Q. When you refer to statements that were
24 angry or threatening in some way, what are you
25 referring to? What were the statements? 11:42

1 A. As I sit here today, I don't recall
2 exactly what they were, but I do recall getting
3 information, and I don't remember from whom it was,
4 but there were -- my recollection is that they were
5 posts on some social media site that indicated some 11:42
6 kind of anger and even somewhat of a threatening
7 tone.

8 Q. Aside from indicating some kind of anger
9 and a threatening tone, do you recall anything else
10 about these statements that Mr. Zeleny made? 11:42

11 A. Other than what I just said, no.

12 Q. Did you get the statements from NEA?

13 A. As I sit here today, I don't recall who I
14 got them from, whether they were from law
15 enforcement, from an outside entity, or from my own 11:43
16 police department. I don't recall.

17 Q. You do recall getting some social media
18 content from NEA, correct, about Mr. Zeleny?

19 A. I believe we did receive some content from
20 NEA regarding the possibility of him coming back to 11:43
21 the site to protest.

22 Q. You recall NEA conducting public source
23 surveillance on Mr. Zeleny; right?

24 A. Yes.

25 Q. And NEA, from time to time, would send you 11:43

1 committee?

2 A. It was -- it's a representative from each
3 department in the City.

4 Q. And how are the representatives selected
5 to serve on that committee? 02:22

6 A. By the departments themselves, by the
7 department head or me.

8 Q. Were you ever on the special events permit
9 committee?

10 A. As I stated already, I was not on the 02:23
11 committee itself, but I was -- I did give input to
12 the original committee that was putting together
13 the criteria for special events permits.

14 Q. We talked a lot last time about what
15 qualifies as a special event. Do you recall that? 02:23

16 A. I do.

17 Q. Who makes the decision, in reviewing a
18 permit application, about whether the event is a
19 special event?

20 A. Normally, it would be the special events 02:23
21 committee.

22 Q. That's the group of people from each
23 department?

24 A. Correct.

25 Q. Who in that group, if anyone, decided that 02:23

1 Mr. Zeleny didn't qualify for special events?

2 MR. MASTER: Objection. Vague and
3 ambiguous.

4 MR. ROBINSON: Let me ask you a different
5 question. 02:23

6 BY MR. ROBINSON:

7 Q. At some point, the City determined that
8 Mr. Zeleny's permit didn't qualify as a special
9 event; correct?

10 A. Correct. 02:24

11 Q. Who made that determination for the City?

12 A. That was the city attorney's office.

13 Q. How did the city attorney's office get
14 involved in Mr. Zeleny's permit application?

15 A. Because they are also a City department, 02:24
16 and there were legal questions that needed to be
17 answered and legal advice that needed to be given.
18 So we went to the -- our legal advisors, who are
19 the city attorneys.

20 Q. Are you aware of any other permit 02:24
21 applications where the city attorney's office has
22 been consulted?

23 A. I'm aware of a few.

24 Q. Can you estimate how many?

25 A. Less than six. 02:24

1 was done via e-mail.

2 Q. Okay. Do you know if anyone tried to set
3 up a meeting with Mr. Zeleny to get more
4 information?

5 A. I don't know. 02:33

6 Q. Part of the ordinary process to get more
7 information is to set up a meeting; right?

8 A. According to the flowchart, yes.

9 Q. According to the written flowchart,
10 Mr. Milde is supposed to confirm a meeting time 02:33
11 with the applicant to get more information;
12 correct?

13 MR. MASTER: Objection. That misstates
14 the document.

15 THE WITNESS: There's a detailed -- 02:34
16 according to this flowchart, there's a detailed
17 review of the application, and it says "Matt Milde
18 confirms the meeting time with the applicant." The
19 documents speak for itself.

20 BY MR. ROBINSON: 02:34

21 Q. Does the document describe the ordinary
22 process for permit applications in 2015 when
23 Mr. Zeleny applied for a permit?

24 MR. MASTER: Objection. Asked and
25 answered. Argumentative. Vague and ambiguous. 02:34

1 e-mail?

2 A. Correct.

3 Q. Did the special events permitting team
4 meet with Mr. Zeleny under any of those mechanisms,
5 to your knowledge? 02:36

6 A. Yes. There was numerous exchanges of
7 e-mails with Mr. Zeleny, requesting more
8 information, by both the community services
9 department and the city attorney's office.

10 Q. Did the other city departments that are 02:37
11 part of the special events permit team participate
12 in this?

13 A. Not that I'm aware of.

14 Q. Are you aware of any phone calls with
15 Mr. Zeleny, prior to the initial denial of this 02:37
16 permit, about the permit?

17 A. I don't know -- I don't know of any phone
18 calls.

19 Q. And are you aware of any attempts to
20 arrange phone calls or in-person meetings with 02:37
21 Mr. Zeleny before the denial of his permit?

22 A. Based on the fact that he was in Southern
23 California, no.

24 Q. Is -- okay. Do you know if anyone at the
25 City of Menlo Park asked Mr. Zeleny if he'd like to 02:37

1 A. They basically said it would have to be a
2 case-by-case basis, and if a case was submitted to
3 them, they would review it.

4 Q. Did they tell you that in their opinion,
5 it wasn't illegal, in all likelihood? 03:00

6 A. I don't -- I don't recall exactly what
7 they said.

8 Q. Did they say words to the effect -- say or
9 write words to the effect that their view was that
10 it was probably not illegal? 03:00

11 A. I don't recall that.

12 Q. I'm going to go ahead and mark the next in
13 order.

14 (Reporter clarification.)

15 (Plaintiff's Exhibit 263 marked
16 for Identification.)

17 BY MR. ROBINSON:

18 Q. I've marked Exhibit 263. It's a
19 multiple-page document, MP 296 through MP 300;
20 correct? 03:01

21 A. Correct.

22 Q. This is from Al Serrato to you and others;
23 right?

24 A. Yes.

25 Q. It appears to be a response to your e-mail 03:01

1 Q. Did you participate in selecting the
2 materials to include with this agenda?

3 A. Yes.

4 Q. Did you select the materials to include?

5 A. Yes. 03:17

6 Q. One of the materials that you included was
7 Mr. Zeleny's permit application; correct?

8 A. Correct.

9 Q. Let me step back a second. This was the
10 meeting with NEA, the Rosewood Hotel and various 03:17
11 other stakeholders relating to Mr. Zeleny's
12 protests; right?

13 A. There was numerous entities, including
14 Stanford, one of the other venture capitalist
15 companies in that complex and all the law 03:18
16 enforcement stakeholders.

17 Q. And the participants in the meeting also
18 included NEA and the Rosewood Hotel; right?

19 A. Correct.

20 Q. At the time that you had this meeting with 03:18
21 those various stakeholders, was Mr. Zeleny's permit
22 application still pending?

23 A. I don't recall exactly when the denial
24 letter went out, so I don't recall as I sit here
25 today. 03:18

1 Q. So let's go down to page 5331. It looks
2 like an image from a website; is that right?

3 A. I couldn't tell you where the image is
4 from, but it is an image, yes.

5 Q. It's the same image that you were asking 03:19
6 the DA's office about?

7 A. Yes.

8 Q. Why did you include this image in the
9 materials for the meeting about Mr. Zeleny?

10 A. Because that was what he intended to 03:19
11 display on the 55-inch display that he listed in
12 the application.

13 Q. How do you know that?

14 A. He told us.

15 Q. In substance, what was discussed at the 03:19
16 meeting on September 2nd, 2015 relating to
17 Mr. Zeleny?

18 A. To the best of my recollection, as I sit
19 here today, since this was five years ago, I know
20 the agenda was set to talk a little bit about 03:20
21 Mr. Zeleny's history of not only protests in Menlo
22 Park but protests around the area, both in Palo
23 Alto, Portola Valley, Menlo Park, even
24 San Francisco prior, and to discuss the application
25 for the special event and a response plan, if 03:20

1 A. To the best of my recollection, I believe
2 there was, from Mr. Milde.

3 Q. Do you know whether the application was
4 ever formally submitted to the permit committee for
5 approval or denial? 03:22

6 A. I don't know.

7 Q. Do you know if any of the other -- or any
8 of the departments filled out the approval section
9 of Mr. Zeleny's permit application?

10 A. Not that I'm aware of. 03:22

11 Q. Do you know if conditions of
12 approval or a denial letter was ever sent to
13 Mr. Zeleny?

14 A. Yes.

15 Q. He received a denial letter; right? 03:22

16 A. Well, he received more than just a denial
17 letter. I know there was e-mail exchanges with the
18 city attorney's office requesting further
19 information, and eventually a denial letter was
20 sent, that's correct. 03:22

21 Q. Stepping back for a second, we talked
22 about the various forms of meetings that could be
23 conducted with the applicant to get more
24 information about an application. What is the
25 typical way that the meeting with the applicant 03:23

1 THE WITNESS: I don't know.

2 BY MR. ROBINSON:

3 Q. Well, are you personally aware of that?

4 A. I don't know whether there were other
5 e-mails or not. You'd have to produce them for me 03:27
6 to be able to recall.

7 Q. As you sit here, you can't recall any
8 others. Is that accurate?

9 A. That's correct.

10 Q. If we go up to the first page of this and 03:27
11 then carrying over to the second, Mr. Zeleny
12 responds to Mr. McClure's questions; correct?

13 A. I see there was some response to the
14 questions, yes.

15 Q. Was the response to the questions 03:28
16 insufficient in some way?

17 MR. MASTER: Objection. Vague and
18 ambiguous. Overbroad. Compound.

19 THE WITNESS: They -- that was not --
20 these answers did not come to me. They came to the 03:28
21 city attorney. You would have to ask the city
22 attorney.

23 BY MR. ROBINSON:

24 Q. As the designated witness for the City of
25 Menlo Park, were Mr. Zeleny's responses to 03:28

1 questions incomplete?

2 MR. MASTER: Same objection.

3 THE WITNESS: I can't answer that. I
4 don't know.

5 BY MR. ROBINSON: 03:28

6 Q. Do you know if Mr. McClure followed up in
7 any way for more information?

8 A. I don't recall, as I sit here today.

9 Q. Do you know if anyone else within the City
10 of Menlo Park followed up with Mr. Zeleny for more 03:28
11 information?

12 A. I can't recall, as I sit here today.

13 Q. In the very top e-mail in the exchange
14 that was copied to you, Mr. Zeleny refers to a
15 willingness to discuss time, place and manner 03:29
16 aspects of his performance.

17 Do you see that?

18 A. I do.

19 Q. Do you know if the City of Menlo Park ever
20 suggested any time, place or manner requirements 03:29
21 that would result in the approval of Mr. Zeleny's
22 application?

23 A. I believe that the letter from the city
24 attorney's office was asking very specific
25 questions that needed to be answered, and if they 03:29

1 reasons why the permit was originally denied.

2 Q. So let's turn back to Exhibit 102.

3 A. What is that?

4 Q. It's the -- the -- let's see. The file

5 name is 150924, Bertini Update to NEA.

03:42

6 A. Okay.

7 Q. The denial letter is attached here; right?

8 A. Correct.

9 Q. And the issue that you're referring to are
10 the issues that are set out in the second paragraph 03:42
11 of this letter; correct?

12 A. Correct. Those are some of the issues,
13 but -- those are some of the issues but -- yeah.
14 The next two paragraphs also deal with more issues
15 besides that one paragraph. 03:42

16 Q. So I'm just referring to the incomplete
17 information. With respect to this denial letter,
18 the incomplete information, what additional
19 information could Mr. Zeleny have provided about
20 the specific location that would have resulted in 03:43
21 the granting of his application?

22 A. The only way I can answer that is reading
23 verbatim the letter that's in front of me. I can
24 do that for you, Counselor, if you'd like.

25 Q. No. I'd like your view as the person most 03:43

1 qualified on behalf of the City of Menlo Park.

2 What information did you want from Mr. Zeleny so
3 that you would grant his application?

4 MR. MASTER: Objection. Asked and

5 answered. Argumentative. The document speaks for 03:43
6 itself.

7 If you have something above and beyond
8 that, you can answer.

9 THE WITNESS: Aside from what the document
10 says, I have no other information. 03:43

11 BY MR. ROBINSON:

12 Q. Is any of the information requested in
13 this paragraph in any of the -- required by any of
14 the written policies of the City of Menlo Park?

15 A. Yes. 03:43

16 Q. Which information is required by the
17 written policies of the City of Menlo Park?

18 A. Sound and lighting equipment, location of
19 the event, exact location of the proposed event,
20 how the setup will be, to analyze traffic control. 03:44

21 Other conditions necessary for the approval are the
22 hours and length of the event. The tent --
23 location of tent, generator, video presentations,
24 portable restroom, temporary lighting, sound
25 system, et cetera, and the fact that there is no 03:44

1 Q. More than five?

2 A. I don't know.

3 Q. Let's focus on the second paragraph, the
4 second substantive paragraph of the letter here.

5 The second two -- the last two sentences -- there's 03:46
6 a paragraph starting at 352 at the bottom, carrying
7 over to 353.

8 Mr. McClure writes: "To the contrary, you
9 are proposing a 'media production' of a one-man
10 protest." 03:47

11 Do you see that?

12 A. Yes.

13 Q. Is there any written policy or guideline
14 or criteria at the City of Menlo Park that a media
15 production of a one-man protest does not qualify as 03:47
16 a special event?

17 A. I'm not aware of any.

18 Q. In granting or denying special event
19 permits, is the City allowed to consider factors
20 outside of the specific written policy? 03:47

21 A. Time, manner, place.

22 Q. Is it permitted to consider time, manner
23 and place requirements outside of the written
24 policy?

25 A. Yes. 03:47

1 referring to it as 103.

2 MR. MASTER: Damion, just for clarity, can
3 we either remove 267 or -- it's ridiculous to have
4 two.

5 MR. ROBINSON: Well, we can't remove it. 04:22
6 Veritext has to remove it.

7 MR. MASTER: So can we remove 267 and just
8 call it 103, since you're referring to it as 103?

9 MR. ROBINSON: Yes, I'm referring to it as
10 103. So let's refer to it as 103. 04:22

11 MR. MASTER: Okay.

12 THE WITNESS: Okay.

13 BY MR. ROBINSON:

14 Q. So in this response to the denial of his
15 permit and his appeal, Mr. Zeleny asked the City of 04:22
16 Menlo Park, If you have any specific requests in
17 this regard, meaning in terms of time, place or
18 manner, please make them with no further ado.

19 Do you see that?

20 A. No. Direct me to where that is. 04:23

21 Q. It's in the third paragraph, the one that
22 starts out: "As to your claim that my application
23 is incomplete."

24 A. Okay. I see it.

25 Q. Do you know if the City did that, provided 04:23

1 specific requests to Mr. Zeleny as to the time,
2 place or manner?

3 A. I do not believe that the City made
4 specific time, place, manner suggestions to
5 Mr. Zeleny, but I know there was an invitation to 04:23
6 discuss those issues.

7 Q. Okay. I'm going to go ahead and mark --
8 I'm going to introduce what was previously marked
9 as Exhibit 105. It should pop up with the file
10 name 160504, Appeal Denial. 04:24

11 A. Okay.

12 Q. Do you recognize this document?

13 A. I recognize it as a letter.

14 Q. A letter that was part of the
15 administrative record of Mr. Zeleny's permit 04:24
16 application and appeal?

17 A. Yes.

18 Q. Is it consistent with your recollection
19 that the City treated Mr. Zeleny's appeal as a new
20 permit application? 04:25

21 A. I don't understand what you're asking.

22 MR. MASTER: Read the document.

23 THE WITNESS: Okay. Let me read the
24 document.

25 MR. ROBINSON: Okay. 04:25

1 THE WITNESS: Yes. In reading the
2 document, the answer is yes. The city attorney's
3 office was treating his appeal as a new
4 application, as there were several modifications
5 that he made to that application. 04:26

6 BY MR. ROBINSON:

7 Q. And the new application was denied through
8 this letter; correct?

9 A. Correct.

10 Q. Do you know if anyone, other than the city 04:26
11 attorney's office, was involved in making the
12 decision to deny the renewed application or the new
13 application?

14 A. Yes. The city attorney's office, and I
15 spoke to the city attorney, and it is my 04:27
16 recollection that Matt Milde also spoke to the city
17 attorney.

18 Q. What did you tell the city attorney?

19 MR. MASTER: Objection. Don't answer
20 that. That's attorney-client-privileged 04:27
21 communication.

22 BY MR. ROBINSON:

23 Q. Are you going to follow your attorney's
24 instruction not to answer?

25 A. Yes. 04:27

1 Q. Does the city attorney have authority to
2 approve or deny permit applications?

3 A. Certainly.

4 Q. Did you believe that Mr. Zeleny's renewed
5 permit application should be denied? 04:27

6 A. My -- my belief was that the concern --
7 I'm sorry. Was there something else?

8 Q. No.

9 A. My belief was that the concern that we had
10 originally regarding the time, place, manner of 04:28
11 this permitted special event was still a concern as
12 far as location, still the confusion regarding the
13 exception to the open carry, the traffic -- the
14 traffic issues, the public safety issues both for
15 Mr. Zeleny, himself, and for the public at large. 04:28

16 So all those -- all those were still
17 concerns of the police department that I, in fact,
18 did let the city attorney know.

19 Q. Do you know if Mr. Milde had a view about
20 whether this -- what was treated as a renewed 04:28
21 application should be denied?

22 A. I don't know the answer to that.

23 Q. Did you talk to Mr. Milde about it?

24 A. Not about this second application, no.

25 Q. Did the city attorney make the ultimate 04:29

1 decision about whether to deny this application?

2 MR. MASTER: Objection. Vague and

3 ambiguous. Overbroad.

4 Go ahead.

5 THE WITNESS: Yes. I believe the document 04:29

6 speaks for itself. That is the city attorney

7 making that determination.

8 BY MR. ROBINSON:

9 Q. Is there any policy or procedure that
10 you're aware of, a written policy or procedure, 04:29

11 that gives the city attorney's office authority to
12 grant or deny special event permit applications?

13 A. As counsel -- legal counsel for the City,
14 it is within their purview to deny an application
15 of this nature. I'm not sure whether it's written 04:29
16 anywhere, but they are legal counsel for the City.

17 Q. And what gives you the impression that the
18 legal counsel for the City in that capacity has
19 authority to deny permit applications?

20 MR. MASTER: Again, the question is vague, 04:30
21 ambiguous and overbroad. Calls for a legal
22 conclusion and speculation.

23 Go ahead.

24 THE WITNESS: The city attorney's office
25 is the department that is our legal advisors. In 04:30

1 some cases, the city attorney's office becomes
2 involved in city business or issues, and they have
3 the authority to make decisions. They work -- the
4 city attorney's office works directly for the city
5 council. 04:30

6 BY MR. ROBINSON:

7 Q. Are you aware of any other permit
8 application that was denied by the city attorney's
9 office, for a special event permit?

10 A. I'm not aware of any, no. 04:30

11 Q. Do you know if, before denying this --
12 what was considered a revised application, the city
13 attorney attempted to contact Mr. Zeleny to address
14 some of the issues raised here, any of the issues
15 raised here? 04:31

16 A. I don't -- as I sit here today, I don't
17 have a recollection of that, whether they did or
18 not.

19 Q. Between Mr. Zeleny filing his notice of
20 appeal or e-mailing his notice of appeal and the 04:31
21 city attorney deciding to deny it, do you know if
22 anyone at the City contacted Mr. Zeleny to try to
23 get more information about his permit application?

24 A. I don't know. I don't have a recollection
25 of that. 04:31

1 participate. That's the issue.

2 Q. Does the event have to be open to anyone
3 who shows up?

4 A. For a public event, yes.

5 Q. For a special event. 04:35

6 A. For a special event, it has to be for the
7 community if, in fact, it is impacting other
8 community members. Now, obviously, if somebody
9 wants to -- as a hypothetical, if somebody wanted
10 to rent a park for a wedding, that doesn't 04:35
11 necessarily mean that everybody in the community is
12 invited, but, of course, they could go watch if
13 they wanted to. You can't stop them from doing
14 that. But it is -- that would be more of a limited
15 impact on the community, if they're at a park, as 04:36
16 opposed to closing down streets, et cetera.

17 Q. Would that qualify as a special event?

18 A. A wedding?

19 Q. Right.

20 A. It certainly would, yes. 04:36

21 Q. What about a block party; if a community
22 wanted to have a block party, that would be a
23 special event; right?

24 A. As long as all the members on that -- all
25 the residents on that block signed an agreement, 04:36

1 Q. Do you recognize this exhibit?

2 A. I'm sorry. Do I recognize the document?

3 Q. Correct.

4 A. Yes. It's a letter.

5 Q. Mr. McIntyre's letter denying Mr. Zeleny's 04:53
6 appeal; correct?

7 A. Correct.

8 Q. Mr. McIntyre lists grounds for denial of
9 the appeal, starting on page 3 and carrying over to
10 page 4. Do you see that? 04:53

11 A. Yes.

12 Q. Do any of those grounds appear in the
13 written policies of the City of Menlo Park
14 governing permit approval or denial?

15 MR. MASTER: Vague and ambiguous and 04:54
16 overbroad.

17 THE WITNESS: Most of these points have to
18 do with Penal Code violations and/or Vehicle Code
19 violations. So, no, they would not be in the FAQs
20 of the special events permit process, as you're 04:54
21 required to follow the law.

22 BY MR. ROBINSON:

23 Q. One of the uses that we talked about
24 before of special event permits are for block
25 parties; is that right? 04:54

1 A. Correct.

2 Q. In connection with block parties, people
3 are allowed to block off a certain portion of a
4 street to have the block party?

5 A. That's correct. 04:54

6 Q. They're allowed to have the block party
7 actually in the street?

8 A. The Vehicle Code allows a local
9 municipality to block off portions of a street.
10 And the answer is yes. 04:55

11 Q. And in connection with special event
12 permit applications for block parties, residents
13 are allowed to block off the street and have the
14 party in the street; correct?

15 A. That's correct. 04:55

16 Q. And that's true, even though the event
17 would interfere with the right-of-way; correct?

18 A. As long as the entire block signed a
19 release saying they were okay with the block party,
20 yes. 04:55

21 Q. Let's look at page -- starting on 950 and
22 carrying over to 951. There are practical aspects
23 and public safety concerns. One is the lighting at
24 night.

25 Do you see that? 04:55

1 A. I do.

2 Q. Is the lighting at night contemplated by
3 the City's written policy as to special events
4 permits?

5 A. No. By the Vehicle Code. 04:55

6 Q. The next sentence says, "City medians are
7 not traditional public forum areas and are
8 inappropriate and unsafe."

9 Is that written into the City's policies
10 anywhere? 04:56

11 A. That is common sense.

12 Q. Okay. Is it written into the City's
13 policies anywhere?

14 A. No.

15 Q. Whose decision is it about whether the 04:56
16 location of an event is a traditional public-forum
17 area?

18 A. Again, it would be based on
19 transportation, the Department of Public Works, the
20 Vehicle Code and then, again, going back to what I 04:56
21 just said, common sense. There are some places
22 that are probably not safe to be having a group of
23 people congregate on, including a median of a
24 well-traveled, high-speed road.

25 Q. I'm going to mark as Exhibit -- 04:57

1 Q. It's an e-mail from you to, it looks like,
2 Jelena Herada and Clay Curtin; correct?

3 A. Jelena Herada and Clay Curtin, that's
4 correct. They are both employed by the City.

5 Q. Attached to the e-mail is a PowerPoint 05:00
6 presentation. Do you see that?

7 A. I do.

8 Q. We couldn't hear your answer.

9 A. I do see the PowerPoint.

10 Q. Is this the PowerPoint that you presented 05:01
11 at the hearing on Mr. Zeleny's permit appeal?

12 A. Yes.

13 Q. Did you put this PowerPoint together?

14 A. I did.

15 Q. Did you make the decision to include on 05:01
16 page 1199 the same image that we've discussed
17 earlier?

18 A. Yes.

19 Q. Did you think that it was relevant to the
20 city council's decision, to consider that image? 05:01

21 A. Yes. This is what Mr. Zeleny said himself
22 he'd be displaying. So, yes, it was relevant.

23 Q. At the hearing, it was suggested that this
24 image might be deemed obscene to minors; is that
25 right? 05:01

1 A. I brought up the same concern I had that I
2 brought up during the city manager's hearing, in
3 that if there was a victim, a complaining victim,
4 that the Penal Code section that I discussed with
5 the DA could have been violated. And, yes, there 05:02
6 was an issue with that.

7 Q. In your mind, as a representative of City
8 staff, was that a reason to deny the application?

9 A. Not -- not in and of itself, no, but it
10 was part of the entire record, that it was 05:02
11 important for the city council to have all the
12 facts.

13 Q. As part of the entire record, was it your
14 view that the image that Mr. Zeleny proposed to
15 display supported denial of the application? 05:02

16 A. I believed it was part of the entire
17 record, and they had the final, ultimate decision
18 on whether to uphold or overturn the appeal. And
19 this was part of the record, so that was put into
20 the PowerPoint. 05:02

21 Q. When you were at the hearing, did you
22 argue that the image that Mr. Zeleny was using was
23 an additional basis to uphold the denial of the
24 appeal?

25 A. Not that I -- as I sit here today, I don't 05:03

1 recall myself saying that it was a specific reason
2 to deny. What I believe I said was it was of
3 concern, also.

4 Q. So the PowerPoint presentation that you
5 put together does not contain the entire record of 05:03
6 Mr. Zeleny's application and appeal; does it?

7 A. Not the entire record, no. It gives
8 bullet points as to some of the timing and the
9 relevant, salient points in our -- basically, our
10 case to the city council. 05:03

11 Q. The image that Mr. Zeleny was displaying
12 was one of your salient points to the city council;
13 correct?

14 MR. MASTER: Objection. Vague and
15 ambiguous. Overbroad. 05:03
16 Go ahead.

17 THE WITNESS: That was the image that he,
18 himself, provided that was going to be displayed,
19 along with an image of a gun that he, himself,
20 provided that was going to be displayed. So, yes, 05:04
21 they were salient because they came from the
22 applicant himself.

23 BY MR. ROBINSON:

24 Q. In the appeal to the city council, you are
25 arguing in favor of upholding the denial of the 05:04

1 permit; right?

2 A. That's correct.

3 Q. Your position, on behalf of the City

4 staff, was that the city council should uphold the

5 denial of the permit; true?

05:04

6 A. That was my argument, yes.

7 Q. And you put together this presentation in

8 order to support your argument the city council

9 should deny -- should uphold the denial of the

10 permit; right?

05:04

11 A. Well, that was part of it. Part of it was

12 also to educate them as to the entire history of

13 this situation, with bullet points describing each

14 step that was taken, what was being contemplated in

15 the special event, et cetera. So it was both

05:04

16 informational and also put together to bolster

17 my -- our case to the city council.

18 Q. Was it your intention, at the time that

19 you put this presentation together, to include the

20 image to assist you in convincing the city council

05:05

21 to uphold the denial of Mr. Zeleny's permit?

22 A. As I've already stated, the images that

23 were in the PowerPoint were provided by Mr. Zeleny

24 himself. So they were put in because they were

25 provided by Mr. Zeleny as an example of what he

05:05

1 intended to do. That is information that the city
2 council, in my opinion, needed to have, provided by
3 the applicant himself.

4 Q. Some of the information that the city
5 council needed to have, in your view, was this 05:05
6 image that Mr. Zeleny proposed to display; is that
7 fair?

8 MR. MASTER: Asked and answered. You're
9 asking the same question over and over again.

10 One more time. 05:06

11 THE WITNESS: Both images were provided by
12 Mr. Zeleny as to what he would plan to display as
13 part of his, quote, unquote, special event, and
14 that was important, salient information that the
15 city council should know. 05:06

16 BY MR. ROBINSON:

17 Q. Did you include the photo of the gun for
18 the same reason?

19 A. I did just say that, Counsel; I did. I
20 said both photos. 05:06

21 MR. MASTER: We've been going for an hour.
22 Let's take a couple of minutes.

23 And then how much time do we have left?

24 MR. ROBINSON: We can take a couple of
25 minutes. We're -- there's a fair amount of 05:06

1 marked exhibit into the exhibit folder. And the
2 file name is Film Permit Guidelines, previously
3 marked as Exhibit 35.

4 Let me ask you a couple of background
5 questions. 05:20

6 At some point, Mr. Zeleny, after the city
7 council denied the special events permit, he asked
8 that it be reconsidered as a film permit; correct?

9 A. Yes. I believe that suggestion came from
10 the city attorney's office. 05:20

11 Q. And Mr. Zeleny then commenced the process
12 of applying for a film permit instead of a special
13 events permit; right?

14 A. Correct.

15 Q. So please take a look at the exhibit I 05:20
16 mentioned, the Film Permit Guidelines, previously
17 marked as Exhibit 35.

18 A. I see it.

19 Q. It's a two-page document, MP 5241 and
20 5242; is that correct? 05:21

21 A. Correct.

22 Q. Are these the City's written guidelines
23 for issuing film permits?

24 A. Yes.

25 Q. Aside from this document and the contents 05:21

1 of the actual film permit application itself, are
2 there any other written policies, procedures or
3 guidelines in the City of Menlo Park about issuing
4 film permits?

5 A. No. 05:21

6 Q. Were there any written guidelines at the
7 time that Mr. Zeleny applied, other than this
8 document and the contents of the application
9 itself?

10 A. Well, it also speaks about having to get a 05:21
11 one-day business permit, too.

12 Q. So let's leave that aside. Aside from the
13 one-day business permit requirement, the total of
14 the written policies of the City of Menlo Park
15 concerning film production permits at the -- go 05:21
16 ahead.

17 A. I didn't say anything.

18 Q. There was feedback, I guess.

19 At the time Mr. Zeleny applied for a film
20 permit, leaving aside the business license issue, 05:22
21 this document that we're looking at, Exhibit 35,
22 and the permit application itself contained all of
23 the written policies of the City of Menlo Park;
24 correct?

25 A. Correct. 05:22

1 Q. Were there any unwritten policies at that
2 time?

3 A. There are no unwritten policies, but,
4 again, just like the special event permit, laws are
5 still applicable, whether they be local, state or 05:22
6 federal.

7 Q. In the ordinary course of processing film
8 permit applications, who makes the decision -- the
9 initial decision of whether to grant or deny?

10 A. That is through the public works 05:22
11 department.

12 Q. Is there a particular -- at the time
13 Mr. Zeleny applied, was there a particular person
14 in public works who made that decision?

15 A. There was somebody assigned to that role, 05:23
16 and that was Ivan Toews, or Toews. I'm not sure
17 how you pronounce it.

18 Q. What criteria -- at the time that
19 Mr. Zeleny applied for a film permit, what criteria
20 did the City consider in whether to grant or deny a 05:23
21 film permit?

22 A. The criteria that you see on the document
23 that we're discussing right now.

24 Q. What criteria are you referring to on the
25 document? 05:23

1 A. Nos. 1 through 10.

2 Q. So let's start with No. 1. No. 1 requires
3 the permit team to submit in writing all pertinent
4 details. Do you see that?

5 A. I do.

05:24

6 Q. Let me ask you a different way.

7 If the person seeking a permit complies
8 with all of these requirements, is the City
9 required to grant a permit?

10 MR. MASTER: Vague and ambiguous.

05:24

11 Overbroad. It's an incomplete hypothetical and
12 calls for speculation.

13 Go ahead.

14 THE WITNESS: No, I don't think the

15 City -- to my knowledge, the City is not required
16 to issue any permit.

05:24

17 BY MR. ROBINSON:

18 Q. So if a person seeking a permit complies

19 with all of the requirements listed in this

20 document, how does the City decide whether or not

05:24

21 to grant the permit?

22 MR. MASTER: Vague and ambiguous as to the
23 term "requirements."

24 Go ahead.

25 THE WITNESS: These are the general

05:24

1 guidelines for a film permit in the City of Menlo
2 Park. Other guidelines would include applicable
3 laws that would be in place, depending on what is
4 being contemplated, and eventually the City would
5 come to a conclusion on whether to issue a permit 05:25
6 or not.

7 BY MR. ROBINSON:

8 Q. What would the City consider in coming to
9 a conclusion about whether they issue the permit or
10 not? 05:25

11 A. I don't understand your question. What
12 does the City consider?

13 Q. Right. What does the City consider in
14 deciding whether to issue a permit? What factors
15 does it consider? 05:25

16 A. Well, just like the special events permit,
17 time, manner, place, and all the criteria you see
18 in the document that we're discussing right now are
19 things the City would consider, along with other --
20 other factors having to do with, again, traffic, 05:26
21 public safety, the impact on residents who may be
22 living near the area of the filming. So there are
23 criteria that the City would have to look for.

24 Q. So the criteria you mentioned, one is
25 traffic; right? 05:26

1 A. Yes.

2 Q. How did the City determine whether a
3 proposed film production has a sufficient impact on
4 traffic to require denial?

5 MR. MASTER: Objection. Hold on. Vague 05:26
6 and ambiguous and overbroad. Incomplete
7 hypothetical. Lacks foundation.
8 Go ahead.

9 THE WITNESS: I don't understand that
10 question. 05:26

11 BY MR. ROBINSON:

12 Q. Traffic impact is one of the things the
13 City considers; right?

14 A. Yes.

15 Q. Is there any particular level of traffic 05:26
16 impact that would cause a permit to be denied?

17 A. There is -- it would be impossible to say
18 there's a level of traffic impact because I don't
19 even know what that means.

20 Q. Is there a certain type of traffic impact 05:27
21 that would cause a permit to be denied?

22 A. Every situation would be different. If
23 someone wanted to close a major arterial for weeks
24 on end to film a movie where there was not a very
25 easy detour around that location, that would be 05:27

1 problematic. So it would be a case-by-case basis.

2 Q. One of the things that you mentioned was
3 public safety; right?

4 A. Correct.

5 Q. Are there any public safety criteria that 05:27
6 would be applied to a film permit application, any
7 specific criteria?

8 A. Section 4.

9 Q. You mean the noise ordinance?

10 A. There's noise, explosions, pyrotechnics, 05:27
11 things of that nature.

12 Q. Other than the criteria listed in point 4
13 of Exhibit 35, are there any other public safety
14 considerations that go into whether a permit
15 application for a film permit will be granted or 05:28
16 denied?

17 MR. MASTER: I'll object to the question
18 as vague, ambiguous and overbroad.

19 Go ahead.

20 THE WITNESS: And then point No. 3 on the 05:28
21 same document.

22 BY MR. ROBINSON:

23 Q. So compliance with -- well, let's start
24 with this. On point No. 3, it refers to guidance
25 of City supervisory employees pertaining to the use 05:28

1 of city property.

2 Do you see that?

3 A. Yes.

4 Q. Is the guidance of City supervisory

5 employees pertaining to the use of city property 05:28

6 published somewhere?

7 A. I don't quite understand what you're

8 talking about. The guidance of City supervisory

9 employees. In other words, the person who is

10 having the film needs to obey the guidance of the 05:29

11 City supervisory employee that would be on the

12 scene.

13 Q. So the guidance is given on a case-by-case

14 basis?

15 A. Correct. 05:29

16 Q. Is the guidance in the discretion of the

17 city supervisory employee?

18 A. Yes.

19 Q. So other than what's listed in points 3

20 and 4 on Exhibit 35, are there any other public 05:29

21 safety considerations that go into the granting or

22 denial of a film permit?

23 A. And point No. 1 in the same document.

24 Q. Okay. Other than point No. 1, 3 and 4,

25 are there any other public safety considerations? 05:29

1 A. Five.

2 Q. Okay. So under point 5, the City -- the
3 permittee shall make arrangements for traffic
4 controls satisfactory to Menlo Park Police
5 Department. 05:30

6 Is that what you're referring to?

7 A. I am.

8 Q. Are there any set criteria, definite
9 criteria, for the arrangements satisfactory for
10 Menlo Park Police Department? 05:30

11 A. That would be on a case-by-case basis. It
12 would depend on what kind of closures they're
13 anticipating.

14 Q. So we've covered 1, 3, 4 and 5.

15 Why don't we do this: Are there any 05:30
16 public safety criteria considered in connection
17 with film permit applications that are not listed
18 on this document that we're looking at?

19 A. Only those dealing with other laws that
20 might be applicable, either local, state or 05:30
21 federal.

22 Q. Other than state, federal or local laws
23 and the points listed on this Exhibit 35, are there
24 any other public safety criteria that go into a
25 film permit application? 05:31

1 A. I believe that about covers it.

2 Q. In some instances, the City will impose
3 conditions on the permit; right?

4 A. The film permit?

5 Q. Correct. 05:31

6 A. Yes.

7 Q. How does the City come up with the
8 conditions to impose on film permits?

9 A. It depends on what the permit seeker is
10 contemplating doing. It's case by case. 05:32

11 Q. Is there an appeals process for film
12 permit decisions?

13 A. The -- to the best of my recollection, the
14 appeal process is similar to the special events.
15 That goes through the department director to the 05:32
16 city manager to the city council.

17 Q. So I'm going to introduce what we've
18 previously marked as Exhibit 74. It may show up at
19 the bottom. The file name is Film Permit -
20 Billions, 74. 05:33

21 A. Okay.

22 Q. It's, for the record, MP 1768 through --
23 it's a 12-page document, starting on MP 1768;
24 correct?

25 A. MP 1779. Yes. 05:34

1 A. Okay.

2 Q. For the record, 73 is MP 1772 through
3 1728; correct?

4 A. Yes.

5 Q. This is also a film permit that was issued 05:40
6 by the City of Menlo Park; correct?

7 A. Yes.

8 Q. And it also contemplates filming on Sand
9 Hill Road in Menlo Park?

10 A. Yes. 05:40

11 Q. If you go to 1726, under the "Activities"
12 section, it refers to -- it says, If possible, we'd
13 like to potentially place a camera on the median,
14 if you're okay with it.

15 Do you see that? 05:41

16 A. Yes.

17 Q. Do you know if this group was given
18 permission to place a camera on the median?

19 A. I don't know.

20 Q. Does the City have a set time frame for 05:41
21 approval or denial of film permits?

22 A. Not that I'm aware of.

23 Q. Is film permitting also a discretionary
24 decision by the City staff?

25 A. Yes. 05:41

1 Q. Do the factors that City staff takes into
2 account depend on the specific filming being
3 contemplated?

4 A. Yes.

5 Q. Is there any list of specific requirements 05:41
6 that are -- other than the documents previously
7 looked at and the film permit application itself,
8 is there any list of criteria published anywhere
9 that need to be satisfied before a film permit is
10 issued? 05:42

11 MR. MASTER: Objection. Asked and
12 answered at least a half a dozen times.

13 One more time.

14 THE WITNESS: As I stated before, the list
15 is the document that you showed me, the 05:42
16 application, and then any applicable local, state,
17 federal laws. Aside from all that, there's no
18 other listed criteria.

19 BY MR. ROBINSON:

20 Q. So I've uploaded a document previously 05:42
21 marked as Exhibit 65. The file name is 170920,
22 Bertini Re Filming.

23 MR. MASTER: What was that, again?

24 MR. ROBINSON: 170920.

25 THE WITNESS: I recognize the e-mail. 05:43

1 BY MR. ROBINSON:

2 Q. For the record, it's MP 1125, one page;
3 correct?

4 A. Correct.

5 Q. And starting about a third of the way down 05:43
6 the page, there's an e-mail from you, dated
7 September 12th, 2017?

8 A. Correct.

9 Q. You are e-mailing various people within
10 the City of Menlo Park about Mr. Zeleny's film 05:43
11 permit application; right?

12 A. Correct.

13 Q. And who is Arlinda Heineck?

14 A. She was the community development director
15 at the time. 05:44

16 Q. Were you ever able to speak with Mr. Toews
17 about Mr. Zeleny's permit application?

18 A. Yes, eventually. During this time, I was
19 out on -- I had shoulder surgery. So a few weeks
20 later when I came back to work is when I believe I 05:44
21 spoke to him.

22 Q. What did you talk about?

23 A. The film permit process.

24 Q. Did you talk to him about Mr. Zeleny's
25 special permit application? 05:45

1 A. Yes. He was already aware that that had
2 kind of articulated through the system.

3 Q. Did you talk to him about the concerns
4 that you expressed regarding Mr. Zeleny's special
5 event permit application?

6 A. Yes, I did speak to him about concerns
7 that we had in both the -- both permitting
8 processes.

9 Q. Did you have concerns about Mr. Zeleny's
10 request for a film permit?

11 A. The concerns had to do with the same
12 public safety issues and the interpretation of the
13 exception to the open-carry law, based on what he
14 was proposing.

15	Q. Did Mr. Toews agree with your concerns?	05:45
----	--	-------

16 A. I don't recall whether he agreed or
17 disagreed. He just listened to what my concerns
18 were.

19 Q. Let's take a look at an exhibit previously
20 marked as Exhibit 36. 05:46

21 MR. MASTER: What's that one called?

22 MR. ROBINSON: It's called 171006, Film

23 Permit. I'm trying to track it down in the folder.

24 MR. MASTER: Okay.

25 MR. ROBINSON: It should show up in your 05:47

1 approving or rejecting a traffic control plan?

2 MR. MASTER: Objection. Asked and
3 answered.

4 THE WITNESS: Well, first, we have to have
5 a plan. In this case, we didn't have a plan. 05:57
6 Generally speaking, it really depends on the --
7 what is being contemplated. Again, it's a
8 case-by-case basis.

9 BY MR. ROBINSON:

10 Q. So other than No. 5, Mr. Zeleny answered 05:57
11 all of the other questions posed by Mr. Toews;
12 correct?

13 A. I'm still reading. 8 and 9 are not really
14 answers. He's just stating that as soon as the
15 City does what he wants the City to do, then he 05:57
16 will provide the information requested, which is
17 not the way the application is set up. And equally
18 is No. 10.

19 Q. At some point, Mr. Zeleny's application
20 was forwarded to the city attorney's office; 05:58
21 correct?

22 A. Yes.

23 Q. Why was it forwarded to the city
24 attorney's office?

25 A. Because Mr. Toews needed assistance in 05:58

1 dealing with the specific application here.

2 Q. Does the city attorney's office generally
3 have authority to approve or deny filming permits
4 within the city?

5 A. Certainly.

05:58

6 Q. What standards govern the city attorney's
7 office's approval or denial of the filming permit?

8 MR. MASTER: Objection. Vague and
9 ambiguous. Overbroad. Calls for a legal
10 conclusion.

05:59

11 Go ahead.

12 THE WITNESS: The city attorney's office
13 would take all the information, and, again, time,
14 place, manner, and dealing with the contemplated
15 disruption to the city and city services, and would
16 make a determination whether or not to grant a film
17 permit. It does not require -- it's not a legal
18 requirement the City grant a film permit.

05:59

19 BY MR. ROBINSON:

20 Q. Is it also a case-by-case determination?

05:59

21 A. Yes.

22 Q. And the factors that are relevant depend
23 on the specific filming project being proposed?

24 A. Correct.

25 Q. So I want to -- we've marked as Exhibit

05:59

1 Q. Do you have an understanding -- strike
2 that.

3 Was there any indication, that you can see
4 in this Exhibit 73, of where the ten members of the
5 camera crew were going to be standing, aside from 06:09
6 somewhere in this entire city block?

7 A. No.

8 Q. Any indication here of where they were
9 going to park the camera -- or the one van that
10 they would be using, other than somewhere in this 06:10
11 vicinity?

12 A. No.

13 Q. What about the portable restroom; any
14 indication from this application where they
15 intended to put that? 06:10

16 A. No.

17 Q. Let's go to the next -- the last exhibit
18 we opened up. So it's 273.

19 A. Okay.

20 Q. So we were going down the list of 06:10
21 questions -- we were going down the list of
22 questions that Mr. Flegel asked. Question B is:
23 Provide the names of the participants or crew that
24 will be part of the filming and his or her role,
25 including cameramen. 06:10

1 Do you see that?

2 A. I do.

3 Q. Is that -- the requirement to list the
4 names of participants, is that anywhere in the film
5 permit guidelines? 06:11

6 A. Not that I'm aware of.

7 Q. The other two applications we've seen
8 didn't list any names of crew or participants; did
9 they?

10 A. Well, not in that application that we've 06:11
11 seen. I'm not sure what other communication that
12 occurred.

13 Q. Is it a requirement of the City of Menlo
14 Park that a film permit applicant list the names of
15 the participants in the film? 06:11

16 A. That's certainly a question and a piece of
17 information that could be asked of someone.

18 Q. For what purpose?

19 A. So we can identify who is going to be
20 present at the filming of the -- of the -- whatever 06:11
21 the event is.

22 Q. Is the identity of the individuals
23 participating in the film production relevant to
24 the City's determination of whether they grant a
25 permit or not? 06:11

1 A. In this case, the city attorney believed
2 that it was.

3 Q. Did the City's guidelines allow the City
4 to grant film permits to some people but not
5 others, depending on the participants in the film? 06:12

6 A. It's discretionary for the City to either
7 grant or not grant the film permit.

8 Q. Can the City exercise that discretion
9 based upon the identity of the participants?

10 A. No. 06:12

11 Q. Do you have any understanding of why
12 Mr. Flegel was asking for the identity of the
13 participants?

14 A. No.

15 Q. Let's go down to (d)(ii) on Mr. Flegel's 06:12
16 series of questions. (d)(ii) is, "Please confirm
17 exactly what image or images you intend to show on
18 the display so staff can analyze for safety and
19 traffic control purposes."

20 Do you see that? 06:12

21 A. I do.

22 Q. Were there particular image or images that
23 Mr. Zeleny intended to display relevant to whether
24 his permit application would be granted or denied?

25 A. Yes. It would depend on the brightness of 06:13

1 Mr. Flegel's e-mail, in particular, his request for
2 exactly what image or images Mr. Zeleny intended to
3 show.

4 Is that criteria anywhere in the written
5 guidelines of the City of Menlo Park? 06:21

6 A. That criteria, it would be asked for, for
7 public safety. What we -- what would be logical to
8 want to know is, do you have bright, flashing
9 lights that are going to be distracting to drivers.
10 Is there going to be a lot of movement in these 06:21
11 images and what kind of images that would be
12 contemplated to be shown as people are driving by.

13 So those are the common-sense questions
14 you want to ask from a public safety perspective.

15 (Reporter clarification.)

16 (Record read by the Reporter.)

17 THE WITNESS: Common-sense public safety
18 factors about what is it that is being shown to
19 people as they're driving by that is being filmed.

20 BY MR. ROBINSON: 06:22

21 Q. Are those public safety factors that you
22 just testified about in any of the City's written
23 policies relating to film permit applications?

24 A. No.

25 Q. Are they factors that would be applied 06:22

1 depending on the specific film production that's
2 being contemplated?

3 A. Correct. As I stated prior, most film
4 productions do not have displays that are being
5 shown to the public or being filmed to find a 06:22
6 reaction. So this is unusual and it's
7 extraordinary on its face.

8 Q. Okay. So is this factor, then, the
9 specific image or images, a factor that applied
10 only to Mr. Zeleny's permit application? 06:23

11 A. Well, it would apply to anybody who wanted
12 to do what he wanted to do, to film the reaction of
13 people as he's showing some images on a display.
14 But as of today, I believe this is the only film
15 application that I've ever seen that indicates they 06:23
16 wanted to do that.

17 Q. Does the City determine what the factors
18 are -- strike that.

19 In Mr. Zeleny's case, did the City decide
20 what factors were relevant to the application after 06:23
21 Mr. Zeleny submitted the application?

22 MR. MASTER: Objection. Vague, ambiguous
23 and overbroad.

24 Go ahead.

25 THE WITNESS: I don't understand what you 06:23

1 mean.

2 BY MR. ROBINSON:

3 Q. I mean, was this a factor -- the exact
4 image or images, was this a factor that was part of
5 the City's policy before Mr. Zeleny applied for a 06:24
6 film permit, or was it a factor that was decided
7 upon based on the application he submitted?

8 A. This is a factor because of what
9 Mr. Zeleny stated he wanted to do. So because he
10 stated he wanted to have a display with some kind 06:24
11 of images on it, from a public safety perspective,
12 we don't care about the content; we couldn't care
13 less about what it is, but we need to know whether
14 it's going to be something very distracting to
15 drivers. 06:24

16 So, again, from a public
17 safety/common-sense perspective, we wanted to know
18 what kind of image are you displaying to people to
19 get a reaction from them so that you can film it.

20 Q. What kind of -- strike that. 06:24

21 Are there any standards for what kind of
22 images can be displayed and what kind can't?

23 A. Content is irrelevant. Again, I will
24 reiterate. It had to do with public safety. As
25 far as the fact he was contemplating displaying 06:25

1 A. It would depend on how close it is.
2 There's case law that talks about whether
3 ammunition in a magazine attached to a weapon is
4 considered loaded or not. So it would depend on
5 the situation. 06:33

6 Q. Did -- okay. Regardless of the proximity
7 of the ammunition to the weapon, is there any
8 requirement in the Penal Code that would require
9 Mr. Zeleny to explain to the City of Menlo Park why
10 he wanted to film with live ammunition versus some 06:33
11 other type of ammunition?

12 A. No.

13 Q. And there's no policy, written or
14 unwritten, in the City of Menlo Park that would
15 require Mr. Zeleny to explain that; is there? 06:33

16 A. Again, aside from what I've already
17 discussed in the California Penal Code, no.

18 Q. So this request by Mr. Flegel is outside
19 of the written and unwritten policy of the City of
20 Menlo Park; true? 06:34

21 A. Yes.

22 MR. MASTER: Objection. That misstates
23 his testimony.

24 Go ahead.

25 THE WITNESS: This is a question of public 06:34

1 safety.

2 BY MR. ROBINSON:

3 Q. It relates to a factor that is not
4 anywhere listed in the factors for the City of
5 Menlo Park; correct?

06:34

6 A. If you think time, manner and place and
7 the manner in which he's doing it, if there's a
8 public safety concern, then it's appropriate to
9 bring that public safety concern out. And live
10 ammunition at a film shoot is a public safety
11 concern.

06:34

12 Q. Is the City of Menlo Park allowed to
13 consider any public safety concern in considering a
14 film permit application?

15 A. Certainly.

06:34

16 MR. ROBINSON: Why don't we take a
17 two-minute break here. Let me look at my notes. I
18 think I'm about wrapped up here.

19 THE VIDEOGRAPHER: Going off the record.

20 The time now is 6:35.

06:35

21 (Off the record.)

22 THE VIDEOGRAPHER: Back on the record.

23 The time now is 6:39.

24 BY MR. ROBINSON:

25 Q. Has the City of Menlo Park granted or

06:39

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 -----
5 MICHAEL ZELENY, an individual,)

6 Plaintiff,)

7 vs.)

Case No.:

) CV 17-7357 JS

8 EDMUND G. BROWN, JR., an)
individual, in his official)
9 capacity; XAVIER BECERRA, an)
individual, in his official)
10 capacity; CITY OF MENLO PARK,)
a municipal corporation; and)
11 DAVE BERTINI, an individual,)
in his official capacity,)

12 Defendants.)
13 -----)

14
15
16 VIDEOTAPED DEPOSITION OF MATTHEW L. MILDE
17 San Francisco, California
18 Thursday, March 5, 2020
19 Volume I
20

21 Reported by:

CHRIS TE SELLE

22 CSR No. 10836

23 Job No. 3985719
24

25 PAGES 1 - 217

1 on vacation, other members of the department would 11:01:41
2 fill in as the department representative, and I
3 recall times that Commander Bertini would take those
4 responsibilities.

5 Q. Were those, were those needs-based 11:02:02
6 temporary circumstances?

7 A. Yes.

8 Q. Can you think of any circumstances where
9 Commander, or, as a chief, Bertini, took over the
10 special permitting process on behalf of the police 11:02:15
11 department?

12 A. No.

13 Q. Do you know what the role of, I'm going to
14 just call him Chief Bertini, because that's his
15 position today; is that correct? 11:02:31

16 A. I believe so, yes.

17 Q. What was the role of Chief Bertini in the
18 review of Mr. Zeleny's permit application?

19 A. I can't say exactly, but my understanding
20 at the time was that he was one of the primary 11:02:53
21 individuals formulating the city's response to Mr.
22 Zeleny's request.

23 Q. Why was he the one involved in the
24 process, rather than the liaison who was in the
25 position of a liaison at the time? 11:03:17

1 MR. MASTER: Objection. Lacks foundation. 11:03:20
2 Calls for speculation. If you know, you can answer.
3 THE WITNESS: Can you repeat the question.
4 MR. MARKEVITCH: Could you read the question,
5 please. 11:03:26
6 (The pending question was read.)
7 THE WITNESS: I don't know.
8 BY MR. MARKEVITCH:
9 Q. Who was the liaison at the time? Let me
10 just specify; at the time when Mr. Zeleny's permit, 11:03:58
11 special permit application was pending.
12 A. Sergeant Matt Ortega.
13 Q. What about, was it Sergeant Kaufman?
14 Sergeant Kaufman, is that --
15 A. Sergeant Kaufman. 11:04:17
16 Q. Was Sergeant Kaufman involved, or no?
17 A. Not that I recall.
18 Q. So, she was not a liaison at the time?
19 A. I don't believe so, not to my knowledge.
20 Q. Was Sergeant Ortega on vacation during the 11:04:29
21 entire time of Mr. Zeleny's special permit
22 application review?
23 MR. MASTER: Objection. Lacks foundation.
24 Calls for speculation. If you know.
25 THE WITNESS: I couldn't say. 11:04:42

1 BY MR. MARKEVITCH: 11:04:44

2 Q. Is it your testimony that he could have

3 been?

4 MR. MASTER: Same objection. You can answer,

5 if you can. 11:04:52

6 THE WITNESS: It's likely that he was not on

7 vacation the entire time.

8 BY MR. MARKEVITCH:

9 Q. So, why was Chief Bertini reviewing the

10 application, rather than Sergeant Ortega? 11:05:01

11 MR. MASTER: Objection. Asked and answered.

12 Argumentative. If you know.

13 THE WITNESS: I don't know.

14 BY MR. MARKEVITCH:

15 Q. Did you ever ask? 11:05:10

16 A. No.

17 Q. Did that question ever cross your mind?

18 A. No.

19 Q. Were you ever told why Chief Bertini was

20 involved in the process of reviewing Mr. Zeleny's 11:05:21

21 special permit application?

22 MR. MASTER: I will just assert an objection to

23 the extent that you received any communications from

24 the city attorney's office related to that topic,

25 instruct you not to answer. Obviously, if you heard 11:05:39

1 Q. Do you remember what was the outcome of 11:07:18
2 your review of Mr. Zeleny's application?

3 A. I recall forwarding it on to my boss to
4 receive input from the city's leadership team.

5 Q. Who was your boss at the time? 11:07:48

6 A. Cherise Brandell.

7 Q. Was the application complete at the time
8 when you forwarded it to Ms. Brandell?

9 A. I don't recall it being complete.

10 Q. What is the standard procedure, what was 11:08:12
11 the standard procedure at the time for handling
12 applications that were incomplete, based on your
13 initial review?

14 MR. MASTER: Objection. Vague and ambiguous,
15 overbroad, incomplete hypothetical, and calls for 11:08:26
16 speculation, but, if you understand it, go ahead.

17 THE WITNESS: Can you repeat the question.

18 (The requested portion was read.)

19 THE WITNESS: The applicant would be contacted
20 and provided details on why their application was 11:09:02
21 incomplete, and they would be asked to resubmit.

22 BY MR. MARKEVITCH:

23 Q. Did you contact Mr. Zeleny and ask him to
24 resubmit an application?

25 A. I don't recall if I did. 11:09:16

1 flowchart? 11:35:39

2 A. Not that I believe.

3 Q. Do you have any knowledge of him doing

4 that?

5 A. No. 11:35:49

6 Q. Do you know if the flowchart was ever

7 reviewed by the legal counsel for the city?

8 A. Not to my knowledge.

9 Q. Who made the final version of the first

10 iteration of the flowchart? 11:36:09

11 A. I did.

12 Q. Do you remember what year it was in?

13 A. No.

14 Q. Do you remember who decided to deny,

15 initially, Mr. Zeleny's application for a special 11:36:45

16 event permit?

17 A. I'm sorry, can you repeat the question

18 there.

19 (The pending question was read.)

20 THE WITNESS: I don't recall. 11:37:16

21 BY MR. MARKEVITCH:

22 Q. Do you remember how you came to find out

23 that the permit is being, the permit application is

24 being denied?

25 A. I recall a conversation I had over the 11:37:34

1 phone with Chief Bertini, who said that he had 11:37:38
2 discussed the city's response with the city's legal
3 counsel, and city manager, and that he would be
4 sending me a written response.

5 Q. Did Chief Bertini tell you who 11:38:12
6 participated, participated in that decision to deny
7 the permit?

8 A. Not specifically that I can recall at this
9 time.

10 Q. Do you remember what your understanding 11:38:25
11 was as to who would have been the individuals
12 involved in that process?

13 MR. MASTER: Lacks foundation. Calls for
14 speculation. If he has personal knowledge, then he
15 can answer. 11:38:41

16 Go ahead. Sorry.

17 THE WITNESS: Not entirely.

18 BY MR. MARKEVITCH:

19 Q. Okay. Well, do you have an understanding,
20 well, do you have a recollection of having an 11:38:50
21 understanding in any part of who was involved in the
22 process with Chief Bertini?

23 A. It was my understanding at the time that
24 it was Chief Bertini, Alex McIntyre, and the city
25 attorney's office. If there were others involved, I 11:39:12

1 don't know. 11:39:15

2 THE VIDEOGRAPHER: Can I ask you to move your

3 microphone onto your lapel, on the lapel of your

4 jacket. Thank you very much.

5 BY MR. MARKEVITCH: 11:39:34

6 Q. How did you gain that understanding?

7 A. Came from my verbal conversations with

8 then Commander Bertini.

9 Q. Do you remember what he told you, in any

10 specific terms? 11:39:55

11 MR. MASTER: Objection. Asked and answered.

12 Go ahead.

13 THE WITNESS: Other than what I mentioned, that

14 he was working with others on developing a city

15 response. 11:40:12

16 BY MR. MARKEVITCH:

17 Q. How many conversations did you have with

18 Chief Bertini with regard to Mr. Zeleny's

19 application?

20 A. I can't say for sure. I'd estimate it was 11:40:26

21 between three and four.

22 Q. Were they all telephone calls?

23 A. No.

24 Q. Some were in-person meetings?

25 A. Yes. One. 11:40:39

1 MR. MASTER: Object. Vague and ambiguous. 12:09:57
2 Overbroad. You can answer.

3 THE WITNESS: I don't remember if I did or not.
4 BY MR. MARKEVITCH:

5 Q. Now, logistically, did you have access to 12:10:03
6 whatever portal there was to actually post
7 information on the website?

8 A. Yes.

9 Q. So, if you needed to post something, you
10 would do it yourself? 12:10:14

11 A. Yes.

12 Q. You didn't have to go to IT and ask them
13 to do it.

14 A. No. No. I believe I was always a
15 publisher of the website. 12:10:35

16 Q. Let's go back to Exhibit 91, please.

17 Is this, does this flowchart represent the
18 general process for special event permit
19 application, as it exists today?

20 MR. MASTER: I'm just going to object. Lacks 12:11:16
21 foundation, calls for speculation, as of today.
22 He's no longer with the city.

23 MR. MARKEVITCH: Thank you.

24 BY MR. MARKEVITCH:

25 Q. As it existed as of the time when you left 12:11:22

1) the City of Menlo Park. 12:11:24

2) A. Generally, yes.

3) Q. Okay. When you say, generally, could you

4) specify why you are qualifying your answer.

5) A. Yes. The first thing that jumps to my 12:11:39

6) mind is the days indicated is not necessarily set.

7) It was general. Depending on the complexity of the

8) application, it might have been reviewed by our --

9) I'm only speculating.

10) MR. MASTER: Don't. You're not speculating. 12:12:14

11) BY MR. MARKEVITCH:

12) Q. So, let's look at step A, initial contact.

13) It looks like in this step you, at least

14) at the time of this flowchart, you would send the

15) application to the applicant in response to, I 12:12:41

16) presume, an inquiry, correct?

17) A. That's correct.

18) Q. Would you then at that time speak with the

19) applicant?

20) A. Not always. 12:13:00

21) Q. Under what circumstances would you speak

22) to an applicant?

23) A. If they called me on the phone.

24) Q. And can you generalize what kind of

25) questions applicants would ask at that point, if you 12:13:43

1 looking for in terms of the detailing of an event on 12:16:22
2 a map.

3 A. The special event permit application
4 included a checklist that the applicant needed to
5 identify certain features, such as tents, road 12:16:35
6 closures, first aid stations, and the like.

7 It was, I would look to make sure that
8 that information was complete to the event. I
9 would, if the applicant included that they had a
10 road closure, I would look to see if it was on a 12:17:05
11 primary response route or not, and where the
12 location of the closure was.

13 Q. Anything else?

14 A. I would confirm that the map was clear, so
15 that when it was photocopied and sent to the permit 12:17:34
16 committee, it was legible.

17 Q. Anything else?

18 A. That's all I can recall.

19 Q. Now, if there were any deficiencies in the
20 application, what would you do, generally? 12:17:47

21 MR. MASTER: Objection. Vague and ambiguous.
22 Overbroad. Go ahead.

23 THE WITNESS: Generally, I would contact the
24 event permit organizer and detail a listing of the
25 items that they needed to exchange or modify or 12:18:08

1 include, depending on the event permit, and have 12:18:13
2 them resubmit.

3 BY MR. MARKEVITCH:

4 Q. And then what would happen?

5 MR. MASTER: Same objections. Go ahead. 12:18:28

6 THE WITNESS: That depended on the person, the
7 applicant, whether or not they wanted to resubmit or
8 not.

9 BY MR. MARKEVITCH:

10 Q. If they resubmitted, what would you do 12:18:38
11 with that application?

12 A. Follow the same process by providing an
13 initial review of the application.

14 Q. And if you found the application to be
15 complete to your satisfaction, what would you do 12:19:02
16 next?

17 A. I would scan the documents and forward
18 them to our permit committee.

19 Q. Now, you were part of the permit committee
20 that would then again review the application for 12:19:27
21 substance, correct?

22 A. That's correct.

23 Q. So now we're talking about step C, staff
24 internal review, correct?

25 A. That's correct. 12:19:38

1 Q. Going back to step B, in the title there, 12:19:40
2 it says, application received, in parentheses, three
3 days.

4 What is the significance of this three
5 days that are noted here? 12:19:49

6 A. Just a general guideline of the time it
7 could potentially take, ideally. Every application
8 was different.

9 Q. So, how often would application review
10 process deviate from this three day estimate? 12:20:15

11 A. I couldn't say for sure.

12 Q. Can you think of any instances where it
13 took you more than three days to review a submitted
14 application?

15 A. I'm sure there were, but I can only 12:20:39
16 speculate.

17 Q. Well, when you say you are sure, what are
18 you basing that statement on?

19 A. Based on the amount of permits that we
20 received in the years I worked for the City of Menlo 12:20:53
21 Park, there must have been a time where I was away
22 at a conference, or vacation, or was too busy with
23 other responsibilities to provide a response within
24 three days. That wouldn't have been abnormal, I
25 don't think. 12:21:15

1 correct? 01:15:47

2 A. Certainly, no more than.

3 Q. As you sit here today, can you recall if

4 you participated in 300 meetings with an applicant

5 pursuant to step D? 01:16:15

6 A. I couldn't say.

7 Q. So as you sit here today you are not sure

8 if it was two meetings during your tenure, or 300

9 meetings, am I correct?

10 A. That's correct. 01:16:28

11 Q. Did you participate in the meeting with

12 Mr. Zeleny?

13 A. I have never met with Mr. Zeleny.

14 Q. Did you ever participate or were present

15 in any proceeding where Mr. Zeleny was also present? 01:16:43

16 A. Not that I'm aware.

17 Q. Have you ever seen Mr. Zeleny, in-person?

18 A. No.

19 Q. Going back to step C --

20 MR. MARKEVITCH: Before we do that, we are 01:17:11

21 number 95, am I correct?

22 MR. MASTER: David, just while we are on this,

23 you appear to be marking as new exhibits exhibits

24 that were previously marked. Under the federal

25 rules, the whole reason we have consecutive 01:17:45

1 A. I couldn't. We did so many, it would all 01:36:23
2 jumble together.

3 Q. Is there any one particular one that you
4 remember, for whatever reason?

5 MR. MASTER: Objection. Asked and answered. 01:36:35
6 Argumentative.

7 THE WITNESS: As I sit here today, I cannot.

8 BY MR. MARKEVITCH:

9 Q. Do you remember Mr. Zeleny's application?

10 A. Vaguely. 01:36:49

11 Q. Do you remember forwarding that
12 application to the committee?

13 A. I don't recall that I did.

14 Q. You don't think you forwarded that
15 application to the committee? 01:37:13

16 A. I don't remember if I did or not.

17 Q. Now, once an application is in the hands
18 of the police department, do you know what criteria
19 the police department applies to its review?

20 A. No. 01:37:28

21 Q. Once the application is in the hands of,
22 what does PW stand for again?

23 A. Public works.

24 Q. Once an application is in the hands of
25 public works maintenance, do you remember what 01:37:40

1 criteria they apply to deciding whether or not an 01:37:43
2 application should be approved or denied?
3 A. No.
4 Q. Same question for public works
5 engineering. 01:37:52
6 A. No.
7 Q. What about planning?
8 A. Can you repeat the question for planning.
9 Q. Once you send an application to planning,
10 do you know what criteria the planning department 01:38:11
11 would apply in reviewing that application?
12 A. I don't know for certain.
13 Q. Do you know if criteria exist that a
14 planning department would apply to review an
15 application? 01:38:31
16 MR. MASTER: Lacks foundation. Calls for
17 speculation.
18 If you know.
19 THE WITNESS: I know they would look at the
20 city ordinance, and, if there was amplified sound, 01:38:39
21 they'd take it to city counsel for approval.
22 BY MR. MARKEVITCH:
23 Q. How do you know that they look at the city
24 ordinance?
25 A. That would be the only way to take it to 01:38:59

1 Q. And do you know how the fire department 01:40:28
2 assessed whether or not it was appropriate to close
3 or not close certain roads?

4 MR. MASTER: To be clear, counsel, you are
5 referring to the fire department as the fire 01:40:36
6 district, just to be clear, so, just to make sure
7 we're on the same page. Go ahead.

8 MR. MARKEVITCH: Sure.

9 THE WITNESS: I do know that the fire district
10 was concerned with closures or events taking place 01:40:55
11 on primary response routes that are identified
12 routes in the city. That's all I'm aware.

13 BY MR. MARKEVITCH:

14 Q. Are you aware of any written policies or
15 lists of criteria that the fire department would use 01:41:18
16 specifically in the context of the special event
17 permit process?

18 A. The fire district, no.

19 Q. Going back to the police department, are
20 you aware of any specific written policies that the 01:41:35
21 police department would use in the context of
22 assessing the propriety of a special event permit
23 application?

24 A. No.

25 Q. Let's move on to the next page of 01:42:04

1 listed at step C is what you are saying. 01:51:48

2 A. In technical terms, no.

3 Q. The fire district approval happens under

4 step C, am I correct?

5 MR. MASTER: You said step C? 01:52:07

6 MR. MARKEVITCH: E.

7 MR. MASTER: Thank you.

8 MR. MARKEVITCH: Yeah.

9 THE WITNESS: Step E. That is correct.

10 BY MR. MARKEVITCH: 01:52:16

11 Q. Are there any other departments that would

12 not participate in the step C review, other than the

13 fire district, that are listed here?

14 A. Departments, not that I can think of at

15 this time. 01:52:38

16 Q. You mentioned that part of the step E

17 conditional approval was a potential for requiring

18 satisfaction of some items related to safety, am I

19 correct?

20 A. Potentially, yes. 01:52:57

21 Q. Other than the fire district approval that

22 we have just discussed at length, what other safety

23 aspects that would be raised under step C can you

24 think of right now?

25 MR. MASTER: I object. Lacks foundation. 01:53:07

1 Calls for speculation. Vague and ambiguous, 01:53:09
2 overbroad.

3 THE WITNESS: It depended on the special event
4 application.

5 BY MR. MARKEVITCH: 01:53:14

6 Q. Can you think of a single instance where a
7 safety issue was involved and related to a
8 conditional approval item, other than the fire
9 district review of the road closure?

10 A. I cannot think of a single instance. I 01:53:29
11 can only speculate items that likely could have
12 occurred.

13 Q. Can you think of items that actually, in
14 fact, have occurred, and you have a recollection of?

15 A. Not at this time. 01:53:49

16 Q. The public notification process only
17 applies to noise permits, correct?

18 A. That is correct.

19 Q. So, if there is no noise involved, then
20 step F is not pertinent, am I correct? 01:54:25

21 A. I would say if there is no amplified
22 noise.

23 Q. And under step F, the proposed decibel
24 rating is compared to the ordinance requirements, am
25 I correct? 01:54:48

1 now. 01:57:50

2 (Exhibit 95 was marked for identification

3 by the court reporter and is attached hereto.)

4 BY MR. MARKEVITCH:

5 Q. This one is going to be 95. Mr. Milde, 01:58:11

6 please review this document and let me know if you

7 are familiar with it.

8 A. It is my understanding that this is the

9 e-mail Mr. Zeleny sent to a number of people, I

10 believe, myself included, with his request for a 01:59:12

11 special event.

12 Q. For the record, the first page is marked

13 as MP000234, and it ends on MP000240.

14 A. Correct.

15 Q. Mr. Milde, is this an application for a 01:59:51

16 special event permit submitted by Mr. Zeleny to the

17 City of Menlo Park?

18 A. It appears to be.

19 Q. Was this application sent to you?

20 A. It was. 02:00:10

21 Q. Did you perform an initial review of this

22 application pursuant to step B of the flowchart?

23 A. I did at the time, yes.

24 Q. And, for clarity, when I say, the

25 flowchart, I'm talking about Exhibit 91. 02:00:29

1 Can we agree on that? 02:00:31

2 A. Yeah.

3 Q. There is no other flowchart.

4 A. Correct.

5 Q. Do you remember what you determined with 02:00:43

6 respect to the completeness of this application,

7 pursuant to step B?

8 A. I did not make a determination.

9 Q. Why not?

10 A. My recollection at the time was that the 02:01:01

11 application was complex, and, considering that the

12 city manager and police chief were cc'd on it, I

13 felt it was under their purview to provide me

14 direction on the city's response.

15 Q. Now, you previously testified that your 02:01:35

16 job at the step B level was administrative, or am I

17 using the correct terminology?

18 A. That's fair, yes.

19 Q. Meaning that you simply looked at whether

20 or not the boxes were checked, correct? 02:01:52

21 MR. MASTER: Objection. Misstates his

22 testimony. Go ahead.

23 THE WITNESS: I would say there's more to it

24 than that, but --

25 BY MR. MARKEVITCH: 02:02:03

1 Q. In part. 02:02:03

2 A. But, ensuring that the application was

3 completely filled out.

4 Q. But you did not perform that review on Mr.

5 Zeleny's application, correct? 02:02:16

6 A. Maybe I don't understand the question.

7 Q. You did not check if Mr. Zeleny's

8 application that you have here in front of you was

9 complete, pursuant to the step B process of the

10 flowchart. 02:02:35

11 A. I reviewed the application.

12 Q. Did you determine if it was complete?

13 A. I didn't, don't recall making a

14 determination.

15 Q. Did you contact Mr. Zeleny and tell him 02:02:49

16 that it was incomplete at any point?

17 A. Not that I can recall at the moment.

18 Q. Do you have a recollection of ever asking

19 Mr. Zeleny to complete any aspect of the application

20 within the context of a step B analysis? 02:03:20

21 A. I don't recall contacting Mr. Zeleny for

22 that purpose.

23 Q. Do you recall contacting Mr. Zeleny for

24 any other purpose, by telephone?

25 A. I have never spoken to Mr. Zeleny via 02:03:45

1 telephone, that I can recall. 02:03:48

2 Q. Is the application that was submitted by

3 Mr. Zeleny on July 10, 2015 complete, per the

4 standards outlined in step B?

5 A. I don't know. 02:04:19

6 Q. Can you determine that now?

7 A. The first thing I notice, looking at this

8 very quickly, is that there is no attached map, and

9 we wouldn't deem that complete.

10 Q. Anything else? 02:04:48

11 A. He doesn't identify if the event reoccurs

12 more than annually, based on the question asked of

13 him in the permit.

14 Q. Where are you looking at, please?

15 A. Event is reoccurring more than annually, 02:05:19

16 question mark, yes or no. There is nothing filled

17 out. I would need to know that answer in order to

18 route it.

19 Q. In order to do what, sir?

20 A. To route it to the permit committee. 02:05:29

21 Q. So, and I apologize, can you please point

22 where it is, because there are many boxes there.

23 MR. MARKEVITCH: Okay. So, can I show this to

24 the camera, right here. Event. Can you see it?

25 THE VIDEOGRAPHER: Don't bring it, put it back 02:05:50

1 Q. Was that before or after you passed the 02:33:55
2 application down to the, or up to the staff internal
3 review stage?

4 A. I just don't recall submitting the permit
5 to the permit committee in this particular instance. 02:34:08

6 Q. Are you saying that it was never submitted
7 to the permit committee?

8 A. I'm saying that I never submitted it to
9 the permit committee.

10 Q. Do you know if somebody else submitted it 02:34:23
11 to the permit committee?

12 A. No.

13 Q. You don't know?

14 A. I don't know.

15 Q. You mentioned that on page 1 of the 02:34:31
16 application there was a box that was not checked
17 pertaining to the question of whether event is
18 reoccurring more than annually; is that correct?

19 A. That's correct.

20 Q. And you previously testified that this 02:34:50
21 would have prevented routing; am I correct in
22 quoting you?

23 A. That would have prevented it from being
24 routed, yes, I think so.

25 Q. Now, pursuant to step B procedures, 02:35:08

1 this process regardless. 02:49:06

2 A. Correct.

3 Q. Pursuant to step C of the flowchart,

4 correct?

5 A. Correct. 02:49:13

6 Q. Any other aspect of complexity that you

7 found in this application that prompted you to

8 forward it to your superiors?

9 A. The fact that it was an event that was

10 being requested for a public median on a major 02:49:29

11 thoroughfare, there's a lot of safety implications

12 with that. That was of concern. We don't typically

13 get applications for community events on a public

14 median. It just doesn't happen. I haven't seen it.

15 Q. Is it fair to say that this application 02:50:04

16 was, in your mind, different enough that you decided

17 to forgo the entirety of the process on this

18 flowchart?

19 A. It definitely stood out.

20 Q. But you did not follow the flowchart with 02:50:17

21 regard to Mr. Zeleny's application, correct?

22 A. Well, I followed the flowchart in regards

23 to that I provided the initial review of it. I did

24 look it over, and looked at it, but I felt that

25 before we moved forward with it that city leadership 02:50:31

1 also needed to review and weigh in and provide 02:50:35
2 direction to staff.

3 Q. Is there a procedure for processing an
4 application the way you decided to do it with Mr.
5 Zeleny's? 02:50:51

6 A. Not that I recall, but, then again, we
7 have never gotten anything quite like this
8 application in before, so, it was an outlier.

9 Q. Is there a reason why this application
10 could not be processed the way the flowchart 02:51:04
11 indicates an application should be processed?

12 A. Again, due to the complexity of what was
13 submitted to me, I felt that it was necessary that
14 city leadership provide direction to staff.

15 (Exhibit 98 was marked for identification 02:51:58
16 by the court reporter and is attached hereto.)

17 BY MR. MARKEVITCH:

18 Q. Do you recognize this chain of e-mails?

19 A. Yes.

20 Q. So, again, you forwarded this application 02:52:47
21 to Clay Curtin and Jim Cogan; is that correct?

22 A. That's correct.

23 Q. Why did you do that?

24 A. They were the heads of the communication
25 team, and, as part of our responsibilities with the 02:53:03

1 the exact location he was intending, as it was not 02:57:00
2 clear on his application. Period.

3 Do you recall being aware on July 21, 2015
4 that the application was going to be denied?

5 A. I can't say if I was or not. 02:57:18

6 Q. Do you recall at any point being aware
7 that the application is being denied, though you
8 were still collecting some information from Mr.
9 Zeleny?

10 A. I don't recall. 02:57:35

11 Q. Do you recall the circumstances of how you
12 found out that the application is going to be
13 denied?

14 A. I recall a telephone call with Commander
15 Bertini, who mentioned that he was working in 02:57:55
16 conjunction with the city attorney's office and the
17 city manager to prepare a city response to Mr.
18 Zeleny, and that the next step at that time was, I
19 would be given verbiage on a denial that I would
20 send to Mr. Zeleny. That's how I found out. 02:58:31

21 Q. Do you remember when this telephone call
22 took place?

23 A. I don't.

24 Q. Did Chief Bertini then tell you what the
25 reasoning was for why the denial was being issued? 02:58:45

1 A. I don't. 04:27:20

2 Q. Does it appear to you that at that point

3 you were still somehow involved in the process?

4 A. Only by the fact that I'm cc'd here on the

5 e-mail by Mr. Zeleny. 04:27:43

6 Q. Anything beyond that?

7 A. No, not that I can tell.

8 MR. MARKEVITCH: Why don't we go off record.

9 THE VIDEOGRAPHER: Going off the record the

10 time is 4:27. 04:28:17

11 (Recess: 4:27 p.m. to 4:39 p.m.)

12 THE VIDEOGRAPHER: We're back on the record.

13 The time is 4:39.

14 BY MR. MARKEVITCH:

15 Q. Mr. Milde, have you participated in any 04:40:16

16 hearings related to Mr. Zeleny's permit application?

17 A. No.

18 Q. Did you provide any assistance to the city

19 manager with regard to any matter related to Mr.

20 Zeleny? 04:40:36

21 A. No.

22 Q. Let's go back to Exhibit number 33, which

23 is the one you have there, and on page 1820, so

24 that's the fourth page of the document. Towards the

25 bottom, there is a section titled, what would cause 04:41:06

1 a permit to get denied. 04:41:09

2 Do you see that?

3 A. Yes.

4 Q. And this paragraph lists a number of

5 factors. Do you mind reading them out, just for the 04:41:19

6 record.

7 A. Yeah. Approval or denial of applications

8 are based --

9 MR. MASTER: Slow.

10 THE WITNESS: Sorry. 04:41:32

11 -- upon several factors, including size, in

12 parentheses, number of people, scale, location,

13 route to be closed, community impact, impact on city

14 services, past event, as reflected in the

15 application, and site map, et cetera. 04:41:56

16 BY MR. MARKEVITCH:

17 Q. I apologize. I think you missed a line

18 there.

19 MR. MASTER: You skipped a line.

20 THE WITNESS: Oh, did I? 04:42:03

21 MR. MASTER: You skipped a line. Past

22 practices.

23 THE WITNESS: Oh, I see. I'm sorry. That

24 makes sense.

25 Past practices, experiences with issued with 04:42:10

1 permits, intended use, nonpayment of fees, poor 04:42:12
2 articulation of event as reflected in the
3 application and site map, et cetera.
4 BY MR. MARKEVITCH:
5 Q. Is this an exhaustive list of factors for 04:42:23
6 a denial of a permit?
7 A. Doesn't appear to be.
8 Q. What are other factors?
9 MR. MASTER: I will just object as vague and
10 ambiguous, overbroad, incomplete hypothetical, calls 04:42:42
11 for speculation. You can answer.
12 THE WITNESS: I couldn't say.
13 BY MR. MARKEVITCH:
14 Q. Is there any guideline for identifying
15 other factors in reviewing an application? 04:42:54
16 A. Not that I'm aware.
17 Q. Now, looking at the factors more
18 specifically, size, number of people, is there a
19 guideline for what size is appropriate and what size
20 is not? 04:43:19
21 MR. MASTER: Objection. Vague and ambiguous.
22 Overbroad.
23 THE WITNESS: It would depend on the
24 application.
25 BY MR. MARKEVITCH: 04:43:37

1 Q. Who makes a decision as to whether a 04:43:37
2 specific application proposes a size that is
3 acceptable?

4 A. Again, it would depend on the application.

5 Q. Is it on the case-by-case basis? 04:43:59

6 A. Yes, as outlined in their application.

7 Q. Where is it outlined?

8 A. Meaning depending on what's in the
9 application would depend on who would weigh in in
10 terms of what was an appropriate event size. 04:44:24

11 Q. Is there a guideline for deciding to match
12 up the content of an application to who is going to
13 be deciding the appropriate size?

14 MR. MASTER: Objection. Vague and ambiguous.

15 THE WITNESS: Can you repeat the question. 04:44:43

16 MR. MARKEVITCH: Strike the question. Let me
17 strike the question.

18 BY MR. MARKEVITCH:

19 Q. Is there a guideline or a written policy
20 that would indicate how to match the substance of 04:45:02
21 the application to the person who should decide
22 whether or not the proposed size is appropriate?

23 A. I don't know if I quite understand the
24 question.

25 Q. What I'm trying to understand is how the 04:45:28

1 appropriate size is decided, and so my understanding 04:45:30
2 is that you said that depending on the application,
3 different people may decide if a size is right or
4 wrong, correct?

5 A. That's correct. 04:45:43

6 Q. Is there a written guideline for
7 identifying the proper people for any specific
8 application?

9 A. Well, in our city ordinance, under, parks,
10 it outlines the amount of people that can congregate 04:45:56
11 in a public park space, and that's how I would
12 determine my guidelines for events occurring on park
13 space.

14 Q. And if it's not in a park?

15 A. I would rely on PD to make that 04:46:19
16 determination.

17 Q. Do you know if they have specific
18 guidelines that would help them determine whether a
19 particular size is proper or not?

20 A. I'm not sure if there is anything listed 04:46:30
21 in our ordinances. I don't know.

22 Q. What about the scale of a proposed event?
23 Are there any specific criteria for deciding whether
24 or not a scale of an event is appropriate or not?

25 A. Again, I would rely on PD to make that 04:46:59

1) determination. 04:47:03

2) Q. And do you know if that decision is

3) discretionary, as far as the police department is

4) concerned?

5) A. I have no idea. 04:47:15

6) Q. What about the location of an event? How

7) is the propriety of the location determined for any

8) given application?

9) MR. MASTER: To the extent it's beyond his

10) scope, it lacks foundation, calls for speculation, 04:47:29

11) but you can certainly answer.

12) THE WITNESS: It would depend on the permit.

13) Every permit's a little different.

14) BY MR. MARKEVITCH:

15) Q. Now, are there any unwritten policies that 04:48:00

16) apply to the permitting process?

17) MR. MASTER: Object. Vague and ambiguous.

18) Overbroad.

19) THE WITNESS: I don't know if I can answer that

20) question fully. 04:48:17

21) BY MR. MARKEVITCH:

22) Q. Let's narrow it down. At the time when

23) Mr. Zeleny's application was pending, were there any

24) policies that were not written down anywhere, but

25) applied by the staff in reviewing various permit 04:48:32

1 1 I, the undersigned, a Certified Shorthand
2 2 Reporter of the State of California, do hereby
3 3 certify:

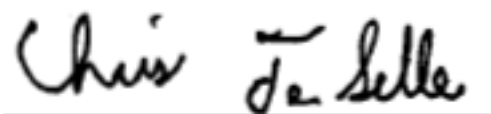
4 4 That the foregoing proceedings were taken
5 5 before me at the time and place herein set forth;
6 6 that any witnesses in the foregoing proceedings,
7 7 prior to testifying, were duly sworn; that a record
8 8 of the proceedings was made by me using machine
9 9 shorthand which was thereafter transcribed under my
10 10 direction; that the foregoing transcript is a true
11 11 record of the testimony given.

12 12 Further, that if the foregoing pertains to the
13 13 original transcript of a deposition in a Federal
14 14 Case, before completion of the proceedings, review
15 15 of the transcript [] was [] was not requested.

16 16 I further certify I am neither financially
17 17 interested in the action nor a relative or employee
18 18 of any attorney or party to this action.

19 19 IN WITNESS WHEREOF, I have this date subscribed
20 20 my name.

21 21
22 22 Dated: March 19, 2020.

23 23 
24 24

CHRIS TE SELLE

CSR No. 10836

25 25

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ZELENY, an individual,)
)
Plaintiff,)
)
vs.) No. CV 17-7357 JS
)
EDMUND G. BROWN, JR., an)
individual, in his official)
capacity; XAVIER BECERRA, an)
individual in his official)
capacity; CITY OF MENLO PARK,)
a municipal corporation; and)
DAVE BERTINI, an individual,)
in his official capacity,)
)
Defendants.)
)

VIDEOTAPED DEPOSITION OF NICOLAS FLEGEL
Menlo Park, California
Tuesday, March 3, 2020

Reported by:
JANIS JENNINGS
CSR No. 3942, CLR, CCRR
Job No. 3985721

1 A. What's an LJ? 10:41

2 Q. ALJ, administrative law judge. 10:41

3 A. No. 10:41

4 Q. So the firm advises the various offices 10:41

5 of the City but does not act as a fact finder or an 10:41

6 adjudicator in any matters; correct? 10:41

7 A. No. I don't even know that would be 10:42

8 appropriate. I've never heard of that before. I 10:42

9 never heard of that. 10:42

10 Q. So taking the film permit process as an 10:42

11 example, what is the first step in the process? 10:42

12 A. Well, there's an application, which is 10:42

13 essentially a glorified encroachment permit, and 10:42

14 there's a PDF that has a list of everything that 10:42

15 staff wants to review, and so an applicant would 10:42

16 fill that out and submit it to staff. 10:42

17 Q. And then the staff acts as a fact finder in 10:42

18 that case? 10:42

19 A. I would -- I'm not sure what you mean 10:42

20 by "fact finder." I would disagree. I think 10:43

21 staff just looks to see is it complete? Do they 10:43

22 understand the application? How is it going to be 10:43

23 done? Is it going to be done -- and then they -- 10:43

24 there is like a team. I'm not really sure who's on 10:43

25 that team, but maybe the heads of every department 10:43

1 specifically -- 10:45

2 A. Uh-huh. 10:45

3 Q. -- what is it exactly that the city council 10:45

4 would be reviewing as far as the city staff's work? 10:45

5 A. I'm trying to think how to answer that. I 10:46

6 mean, I think they would review the whole process, 10:46

7 the application, and whether or not -- and the city 10:46

8 council is also an authority whether or not they 10:46

9 want to grant it or not. 10:46

10 Q. And what is that authority based on? 10:46

11 A. I think city council has ultimate authority 10:46

12 to make a whole lot of decisions for the City. 10:46

13 They're a general law city. They can -- they vote 10:46

14 on and make important decisions all the time, every 10:46

15 meeting. 10:46

16 Q. In reviewing a specific matter such as 10:46

17 a film application, is the discretion by the city 10:46

18 council governed by any sort of factors or rules? 10:46

19 A. I mean, California law, federal law, court 10:46

20 cases that are out there. 10:47

21 Q. Have you ever done any work for the 10:47

22 Rosewood Hotel? 10:47

23 A. No. 10:47

24 Q. What about Stanford? 10:47

25 A. No. 10:47

1 Yes. 11:06

2 BY MR. MARKEVITCH:

3 Q. So I'm going turn this -- I'm going 11:06

4 to be pointing to this portion of the sidewalk 11:07

5 (indicating).

6 So, Mr. Flegel, this is the portion of the 11:07

7 sidewalk -- 11:07

8 A. Uh-huh.

9 Q. -- that is shown in this photograph and then 11:07

10 there is roadway that is shown in this photograph. 11:07

11 So when you looked at it when you received 11:07

12 this email, did you not understand that Mr. Zeleny 11:07

13 wanted to stage his protest here or his filming here 11:07

14 on the sidewalk? 11:07

15 MR. MASTER: Objection. Asked and answered. 11:07

16 Argumentative. 11:07

17 THE WITNESS: So I will say that was my 11:07

18 assumption, but I did not know for sure. 11:07

19 BY MR. MARKEVITCH: 11:07

20 Q. Okay. Is this the most reasonable 11:07

21 understanding of his application? 11:07

22 MR. MASTER: Objection. Argumentative. 11:07

23 Lacks foundation and calls for speculation. 11:07

24 THE WITNESS: So the problem was is 11:07

25 Mr. Zeleny had talked about doing his production in 11:07

1 are -- that received the email? 11:12

2 BY MR. MARKEVITCH: 11:12

3 Q. Yes. 11:12

4 A. I don't remember doing so. 11:12

5 Q. Okay. So who is Ivan Toews, T-o-e-w-s? 11:12

6 A. Mr. Toews was a City of Menlo Park employee 11:12

7 in Public Works and he was at the time in charge of 11:12

8 the film permits. 11:12

9 Q. Was he the primary person at the City who 11:12

10 was making the decision with regard to the film 11:12

11 permit? 11:12

12 A. He was the point person to receive the 11:12

13 permits, and once he received it, he would -- my 11:12

14 understanding of the process is Mr. Toews would 11:13

15 distribute it to the department heads of the 11:13

16 departments that appeared to him to be implicated 11:13

17 and then they would all work together. 11:13

18 Q. So you were requesting information from 11:13

19 Mr. Zeleny and then that information was being 11:13

20 passed to the City, including to Mr. Toews; is that 11:13

21 correct? 11:13

22 A. So, no, not exactly. I was not requesting 11:13

23 any information until -- until later when the legal 11:13

24 question was posed to me regarding the exemption and 11:13

25 whether or not a permit was even required. That's 11:13

1 not in making that determination the staff would 11:31
2 look at any written material? 11:31
3 MR. MASTER: Objection. Asked and answered. 11:31
4 THE WITNESS: I think I answered that. 11:31
5 BY MR. MARKEVITCH: 11:32
6 Q. Okay. You mentioned municipal codes. 11:32
7 A. Municipal codes, California law, vehicle 11:32
8 code. 11:32
9 Q. Okay. Any specific sections of those codes 11:32
10 that you're aware of that the staff would be looking 11:32
11 at? 11:32
12 MR. MASTER: Lacks foundation. Calls for 11:32
13 speculation. 11:32
14 THE WITNESS: Yeah, me? No. 11:32
15 BY MR. MARKEVITCH: 11:32
16 Q. You don't know? 11:32
17 A. I don't know. 11:32
18 Q. How many film permits have you worked on for 11:32
19 the City of Menlo Park? 11:32
20 A. Very few. 11:32
21 Q. Two? 11:32
22 A. Maybe two, maybe three. 11:32
23 Q. Do you remember the other one or two permits 11:32
24 that you worked on in addition to Mr. Zeleny's? 11:32
25 A. Very vaguely. I remember discussing with 11:32

1 relevant department heads. 11:35

2 Q. And is there a fixed set of relevant 11:35

3 department heads who would be involved in the film 11:35

4 permitting process? 11:35

5 A. I think it is completely dependent on each 11:36

6 film permit. 11:36

7 Q. And who determines which department the 11:36

8 request goes to? 11:36

9 A. That would be whoever is in charge of taking 11:36

10 in the film permits from Public Works. 11:36

11 Q. Do you know if there's a written policy 11:36

12 within the City of Menlo Park that dictates how the 11:36

13 permitting process should be structured for any 11:36

14 specific permit? 11:36

15 A. Well, there is the film permit application. 11:36

16 I don't know of any other document or rules that are 11:36

17 in place. 11:36

18 MR. MARKEVITCH: Exhibit 63? 11:37

19 DEPOSITION REPORTER: 64. 11:37

20 MR. MARKEVITCH: 64. 11:37

21 (Exhibit 64 marked for identification.) 11:37

22 BY MR. MARKEVITCH: 11:37

23 Q. Please take a look at this exhibit. 11:37

24 MR. MARKEVITCH: For the record, it's a 11:37

25 chain of emails starting with MP001221 and ending 11:37

1 encroachment permit application. I don't know if 12:10
2 there were additional documents attached to this or 12:10
3 provided at this specific time. 12:10
4 Q. What is the function of this encroachment 12:10
5 permit in the context of Mr. Zeleny submitting it? 12:10
6 A. Well, this is the film permit. That's the 12:10
7 entire function. 12:11
8 Q. If you go page 3 of this document. 12:11
9 A. Uh-huh. 12:11
10 Q. You can see it looks like there's an email 12:11
11 from Mr. Zeleny -- 12:11
12 A. Uh-huh.
13 Q. -- and I'm just going represent that it 12:11
14 looks like this is the email to which he attached 12:11
15 the encroachment application that we were just 12:11
16 looking at. Does that sound correct, Mr. Flegel? 12:11
17 A. It looks correct. 12:11
18 Q. And in this email there's some additional 12:11
19 information regarding the application of Mr. Zeleny; 12:11
20 correct? 12:11
21 A. Yes. 12:11
22 Q. Did you review this email at any time prior 12:11
23 to today? 12:11
24 A. Yes. 12:11
25 Q. When did you review it for the first time? 12:11

1 A. Well, it would have been Mr. Toews and it 12:15
2 would have been someone at the police department. 12:15
3 Q. Do you know who at the police department? 12:16
4 A. Not specifically. I do believe there were 12:16
5 a few people that were looking into the traffic 12:16
6 and public safety implications. I don't know who 12:16
7 exactly. 12:16
8 Q. Do you remember the process, the specifics, 12:16
9 by which Mr. Toews relayed to you the information 12:16
10 that you then relayed to Mr. Zeleny? 12:16
11 A. I mean, if I looked at it carefully, my 12:16
12 memory is I mostly cut and paste his previous email, 12:16
13 and then Mr. Zeleny provided a response to, but it 12:16
14 wasn't -- I think the idea from staff was that it 12:16
15 wasn't a complete response. 12:17
16 Q. Did you yourself analyze Mr. Zeleny's 12:17
17 response to the staff's request for additional 12:17
18 information? 12:17
19 A. I read it. That was not really my role was 12:17
20 to analyze whether or not it was complete or not. I 12:17
21 wasn't the one making the determinations on whether 12:17
22 or not it was complete. My role at that point was 12:17
23 just to try to figure out how to move this along 12:17
24 so we could get the permit and to respond to his 12:17
25 question. I mean, I think I responded to his 12:17

1 question, yes, you can open carry as soon as your 12:17
2 film permit is issued as part of this -- as part of 12:17
3 this process, which was the question that he had 12:17
4 posed to me. 12:17

5 Q. Okay. So were you working on any other 12:17
6 questions, whether legal or logistical, with regard 12:17
7 to this application? 12:17

8 A. Well, the other -- so there's the question I 12:17
9 just mentioned. 12:18

10 Q. Correct. 12:18

11 A. Whether or not the exemption would be met; 12:18
12 and I answered, yes, it would be if you obtain the 12:18
13 film permit. 12:18

14 And then No. 2, I don't remember exactly 12:18
15 how it -- I think maybe it was the next email or two 12:18
16 emails later where Mr. Zeleny, it sounded like he 12:18
17 was protesting whether or not he even needed to fill 12:18
18 out the permit and if it was appropriate for him to 12:18
19 just simply wear a GoPro camera and a clown nose and 12:18
20 if that was sufficient to meet the exemption. So 12:18
21 there was that issue as well. 12:18

22 Q. Was it sufficient in your determination 12:18
23 to meet the exemption if he was wearing the GoPro 12:18
24 camera in a clown suit? 12:18

25 A. That's really the million dollar question. 12:18

1 was what it -- it was described more as a film 12:22
2 project than a special event project. 12:22
3 Q. And that is in the context of his 12:22
4 application for the special event project? 12:22
5 A. Right. 12:22
6 Q. Now, you testified that somebody within 12:22
7 the City staff had reviewed Mr. Zeleny's response to 12:22
8 their questions; correct? 12:22
9 A. My understanding is Mr. Toews did. 12:22
10 Q. Do you know if Mr. Toews conducted 12:22
11 this review in the context of specific, you know, 12:22
12 criteria that he was applying to ascertain whether 12:23
13 or not the responses were sufficient? 12:23
14 A. Well, yes. I mean, there's the actual video 12:23
15 or film permit application that lists what their 12:23
16 criteria are. 12:23
17 Q. Let's go back to Exhibit 61, if we may. 12:23
18 A. Okay. 12:23
19 Q. Okay. And so we're going to go back and 12:23
20 forth to the question and the answer several times 12:23
21 here. So the questions start on page 1291. This is 12:23
22 the second page of this document. 12:23
23 A. Okay. 12:23
24 Q. Okay. At the very bottom there it 12:23
25 looks like there's an email from Mr. Toews dated 12:24

1 crew and their roles, including the cameramen. 13:41

2 A. Uh-huh.

3 Q. Is there any authority for requesting 13:41

4 the names of the participants in a filming permit 13:41

5 context? 13:41

6 A. Well, paragraph 1 asks for the number of 13:41

7 cast and crew members. My recollection was because 13:41

8 someone was going to be holding the weapon, that the 13:41

9 police department wanted to make sure it wasn't a 13:41

10 felon or something along those lines. It was 13:41

11 someone that could legally hold the weapon. 13:41

12 Q. And that type of analysis and background 13:41

13 check is part of the film permitting process at the 13:41

14 City of Menlo Park? 13:42

15 MR. MASTER: Objection. Vague and ambiguous 13:42

16 and overbroad. 13:42

17 THE WITNESS: For this specific application 13:42

18 figuring out who is going to be holding weapons I 13:42

19 think is something that the City had to determine to 13:42

20 make sure it was legally going to be done for public 13:42

21 safety purposes. 13:42

22 BY MR. MARKEVITCH: 13:42

23 Q. Prior to issuing a filming permit. 13:42

24 A. Yes. 13:42

25 Q. So if a big Hollywood production came in and 13:42

1 seems to be the same as A.

2 DEPOSITION REPORTER: A or 8?

3 MR. MARKEVITCH: "A."

4 DEPOSITION REPORTER: Sorry. "I don't know
5 why..."

6 THE WITNESS: I'm on board with you. A 14:19

7 and F are asking the same question, I would think. 14:19

8 Maybe staging is different. Again, this was -- this 14:19

9 was not my call a hundred percent. 14:19

10 BY MR. MARKEVITCH: 14:19

11 Q. So F was not written by you? 14:19

12 A. It may have been, but -- I may have typed 14:19

13 the words -- I mean, I certainly typed the words, 14:19

14 but the information sought was being sought by staff 14:19

15 to understand it. 14:19

16 And, again, I think that question is 14:19

17 answered at some point by Mr. Zeleny. 14:20

18 Q. Paragraph G, "Loaded ammunition." 14:20

19 "You indicated that you intend to 14:20

20 have loaded ammunition feeding devices 14:20

21 with you. Please describe what this 14:20

22 means, and provide pictures of the 14:20

23 props," and then there's an example. 14:20

24 "For example, you are intending to use 14:20

25 props (fakes)" -- I'm sorry. Strike that. 14:20

1 "For example, are you intending to use 14:20
2 props (fakes) or have with you actual 14:20
3 magazines with live ammunition?" 14:20
4 Did you draft this paragraph G since it 14:20
5 pertains to the weapons? 14:20
6 A. I certainly wrote this. And, again, this 14:20
7 was the police trying to figure out what type of 14:20
8 public safety elements they needed to consider. We 14:20
9 live in a country with a bunch of mass shootings. 14:21
10 If he's going to have guns with ammunition, that's 14:21
11 half a step away. That's something they need to 14:21
12 consider. 14:21
13 Q. As far as the exception for the prohibition 14:21
14 on open carry is concerned -- 14:21
15 A. Right. 14:21
16 Q. -- does it matter if the person is going 14:21
17 to have legal possession of real, live or prop 14:21
18 ammunition? 14:21
19 A. In terms of the exception? 14:21
20 Q. Yeah. 14:21
21 A. I mean, you're asking -- that's really a 14:21
22 question for a judge. I would think no, but having 14:21
23 the live ammunition is a public safety issue that 14:21
24 is -- you know, it has to be dealt with as part of 14:21
25 the permit. 14:21

1 Q. Let me ask you a hypothetical question. 14:21
2 Let's say the answer to this question was -- and I 14:22
3 think indeed it is -- 14:22
4 A. Uh-huh.
5 Q. -- that it's going to be live ammunition but 14:22
6 it's going to be carried in a manner that is legal 14:22
7 within the context of the exception. Would that be 14:22
8 satisfactory for the permit application process? 14:22
9 MR. MASTER: I'll just object it's vague 14:22
10 and ambiguous, lacks foundation, and calls for 14:22
11 speculation. 14:22
12 THE WITNESS: You're going to have to ask 14:22
13 the police department that question. I can't answer 14:22
14 it. 14:22
15 BY MR. MARKEVITCH: 14:22
16 Q. So it's the police department that makes 14:22
17 that decision? 14:22
18 A. They're the ones dealing with this public 14:22
19 safety aspect, yes. 14:22
20 Q. And they have the discretion to deny the 14:22
21 permit based on the presence of live ammunition, as
22 far as you know? 14:22
23 A. Honestly, I don't know. 14:22
24 Q. So you don't know if they have the 14:22
25 discretion to deny it based on presence or absence 14:22

1 of live ammunition? 14:22

2 A. They have the discretion to determine if 14:23

3 they think it's a public safety problem and to 14:23

4 communicate that with the applicant and figure out a 14:23

5 way so the applicant can make their movie in a way 14:23

6 that the City is comfortable with and it's going to 14:23

7 be a safe -- and done in a safe way. 14:23

8 Q. Are you aware of any communications between 14:23

9 the police department and Mr. Zeleny with regard to 14:23

10 conditions under which the police department would 14:23

11 be satisfied with the safety concerns? 14:23

12 A. Well, that's actually why I'm asking 14:23

13 the question here, so we can be provided that 14:23

14 information and it can be analyzed and worked 14:23

15 through as part of granting the permit. 14:23

16 Q. Well, did they ever say, "We can grant 14:23

17 it conditionally, but don't bring live ammo"? 14:24

18 A. That exact email I don't believe was ever 14:24

19 written. I mean, I don't know -- I don't know -- 14:24

20 I'm trying to think of the concept of conditionally 14:24

21 granting a permit. I don't even really know what 14:24

22 that means. That's just something that happens. 14:24

23 I mean, would you -- I'm just trying to think out 14:24

24 loud. Would you ask the DMV to conditionally grant 14:24

25 you a driver's license before you go take the test? 14:24

1 A. No. I like to keep using that term though. 14:37
2 That was just an example. I have two little kids. 14:37
3 They draw everything in stick figures, so... 14:37
4 MR. MARKEVITCH: All right. 14:37
5 DEPOSITION REPORTER: Exhibit 73. 14:37
6 (Exhibit 73 marked for identification.) 14:37
7 MR. MARKEVITCH: For the record, this is 14:37
8 another permit. The Bates number on the first page 14:37
9 is MP001722. 14:37
10 THE WITNESS: Thank you. 14:38
11 BY MR. MARKEVITCH: 14:38
12 Q. Do you recognize this as another permit 14:38
13 issued by the City of Menlo Park? 14:38
14 A. I've never seen this before. That's 14:38
15 certainly what it looks like. It looks like it 14:38
16 was produced in this litigation. 14:38
17 Q. If you go to the page 1726. 14:38
18 A. Yes. 14:38
19 Q. There's a map there; correct? 14:38
20 A. A hard to read map; but, yes. 14:38
21 Q. Yeah. And it presumably identifies where 14:38
22 this photo shoot or filming is going to take place? 14:39
23 MR. MASTER: Well, I'm just going to object. 14:39
24 The document speaks for itself. He's already -- 14:39
25 the witness has already said he's never seen the 14:39

1 I, JANIS JENNINGS, CSR No. 3942, Certified
2 Shorthand Reporter, certify:

3 That the foregoing proceedings were taken
4 before me at the time and place therein set forth, at
5 which time the witness was duly sworn by me;

6 That the testimony of the witness, the
7 questions propounded, and all objections and statements
8 made at the time of the examination were recorded
9 stenographically by me and were thereafter transcribed;

10 That the foregoing pages contain a full, true
11 and accurate record of all proceedings and testimony.

12 Pursuant to F.R.C.P. 30(e)(2) before
13 completion of the proceedings, review of the transcript
14 [] was [X] was not requested.

15 I further certify that I am not a relative or
16 employee of any attorney of the parties, nor financially
17 interested in the action.

18 I declare under penalty of perjury under the
19 laws of California that the foregoing is true and
20 correct.

Dated this 12th day of March 2020

21
22 
23
24

JANIS JENNINGS, CSR NO. 3942

25 CLR, CCRR

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
MICHAEL ZELENY,)
)
Plaintiff,)
)
vs.) No. CV 17-7357 JCS
)
GAVIN NEWSOM, et al.,)
)
Defendants.)
_____)

REMOTE VIDEO-RECORDED DEPOSITION OF ALEX D. MCINTYRE

San Francisco, California

Friday, July 31st, 2020

Reported by:

DAWN A. STARK

CSR No. 7847

Job No. 4195014

Pages 1 - 197

1 Q. What -- what factors did you consider in trying
2 to ascertain whether or not having that monitor that
3 Mr. Zeleny was proposing would create an unsafe
4 condition?

5 A. What factors did I consider?

6 Q. Correct.

7 A. Advice from my Public Works staff with regards
8 to whether or not such a display could be any kind of
9 distraction.

10 Also, just personally having driven Sand Hill
11 many times, the speed limit there and the idea of being
12 distracted by whatever display is there, you know,
13 creating an unsafe situation.

14 Q. Did the city conduct any studies with regard to
15 whether or not a display of the type Mr. Zeleny was
16 proposing would indeed impair a driver's ability to
17 concentrate on what they were doing?

18 A. I don't believe we did.

19 Q. Were there concerns with the brightness of the
20 display?

21 A. The brightness would have to do with creating a
22 distraction, so yes.

23 Q. Are you aware of any standards for determining
24 whether or not a certain brightness of a display is a
25 distraction?

1 A. I am not aware of that, no.

2 Q. Are you aware of any work being done by anybody
3 at the City of Menlo Park with regard to determining
4 whether or not Mr. Zeleny's proposed display would be a
5 distraction in the context of the brightness?

6 A. I'm unaware of any studies.

7 Q. Can you say with certainty that some studies
8 were not conducted?

9 A. I couldn't say with certainty, but I can say
10 with a certain level of confidence that these studies
11 were not conducted.

12 Q. Can you say with a level of confidence that no
13 studies were conducted whatsoever with regards to whether
14 or not a display that Mr. Zeleny proposed would indeed
15 cause a distraction?

16 MR. MASTER: Objection. Asked and answered.
17 Argumentative.

18 Go ahead.

19 THE WITNESS: I could not say for a fact that
20 anyone on my staff in the City of Menlo Park at the time
21 may or may not have conducted any kind of exploration,
22 research, or -- or study.

23 BY MR. MARKEVITCH:

24 Q. Are you aware of any such exploration, research,
25 or study?

1 A. I'm unaware.

2 Q. Do you, in the context of being a Hearing
3 Officer, expect that any such studies would have been
4 presented to you?

5 MR. MASTER: Objection. Vague and ambiguous.
6 Overbroad.

7 THE WITNESS: Repeat the question.

8 BY MR. MARKEVITCH:

9 Q. If the studies were conducted or research was
10 conducted of the type that we were just discussing, would
11 you expect that information to be presented to you at the
12 hearing with regards to Mr. Zeleny's application?

13 A. That would -- that would be an expectation, yes.

14 Q. Are there any standards that would require such
15 information to be presented to you in the context of an
16 appeal hearing?

17 A. I don't know.

18 Q. Are you aware of any standards or standard
19 operating procedures or rules within the City of
20 Menlo Park that would outline a procedure for how the
21 evidence necessary for an appeals hearing of the type
22 that you presided over has to be collected?

23 A. I am not aware of any.

24 Q. Are you aware of any rules or procedures within
25 the City of Menlo Park that govern how available evidence

1 that was collected by any means, by anyone, would be
2 presented to a hearing of the type that you presided
3 over?

4 A. I'm unaware of that.

5 Q. Who made a decision that Chief --
6 Commander Bertini would be the only person presenting
7 information to you at the time of the appeal hearing?

8 A. I don't know.

9 Q. Did you make that decision?

10 A. No.

11 Q. Did you make any decision that excluded
12 everybody else from the hearing from the side of the
13 Menlo Park city?

14 A. No.

15 Q. Do you remember requests by others to attend the
16 hearing?

17 A. No.

18 Q. Do you remember asking anyone on your staff to
19 ascertain who should be at the hearing?

20 A. No.

21 MR. MASTER: David, we've been going for about
22 an hour.

23 What's your time estimate?

24 I'm just trying to see if we need a brief lunch
25 or not.

1 following.

2 Q. Okay. What are those four bullets and how do
3 they relate to the three bullet points that we've just
4 discussed?

5 MR. MASTER: Objection. Compound. The document
6 speaks for itself.

7 Go ahead.

8 THE WITNESS: I believe these last four bullets
9 may not be cited under any legal specific authority,
10 whether it's the state, federal, or local laws.

11 They were more of a practical, common-sense
12 approach to some of the concerns, as well.

13 MR. MARKEVITCH: Okay.

14 Q. Looking at the top one, do you mind reading it
15 for the record, please?

16 A. I apologize?

17 Q. Looking at the -- do you mind reading the top --
18 the first bullet point on that --

19 A. Oh, certainly.

20 (Witness reviewing screen.)

21 "The lighting at night would be highly
22 distracting to motorists, cyclists, and pedestrians."

23 Q. Did anybody make a determination that the
24 lighting would indeed be highly distracting to motorists,
25 cyclists, and pedestrians?

1 A. I think it was basically a practical
2 understanding of mine that that could be certainly the
3 case.

4 Q. Your personal understanding; correct?

5 A. Correct.

6 Q. And in gaining that understanding, did you look
7 at any objective factors?

8 A. No, I --

9 MR. MASTER: Vague and ambiguous -- hold on.

10 Objection. Vague and ambiguous. Overbroad.

11 Go ahead.

12 THE WITNESS: No, I did not.

13 BY MR. MARKEVITCH:

14 Q. Are there any procedures that existed within the
15 City of Menlo Park that would inform this understanding
16 in any way?

17 A. Not to my knowledge.

18 Q. Did you review any data before you reached this
19 understanding?

20 A. No.

21 Q. Moving on to the next bullet point, I'll read
22 it.

23 "City medians are not traditional public forum
24 areas and are inappropriate and unsafe."

25 Did you make this determination personally?

1 MR. MASTER: Objection --

2 BY MR. MARKEVITCH:

3 Q. -- during the time period of 2012 through the
4 time when you were reviewing Mr. Zeleny's matter?

5 MR. MASTER: Objection. Vague and ambiguous and
6 overbroad. Lacks foundation. Calls for a legal
7 conclusion.

8 Go ahead.

9 THE WITNESS: I'm -- I'm aware -- I believe
10 there were objective -- there were factors that staff
11 would look at and consider in reviewing the application
12 for any kind of event or any kind of a permit.

13 And each of those would flow to the various
14 affected departments to make sure there was an
15 understanding of what was being requested and the impact
16 it would have upon the -- either the public right-of-way,
17 the public space, or the community.

18 BY MR. MARKEVITCH:

19 Q. Are you aware of any written document that
20 summarizes the factors and the objective standards
21 applied to the review by various departments?

22 A. I am not aware of that.

23 Q. In the same folder, there is another exhibit
24 that is titled, "SE Permit FAQ Ex 33."

25 It's the very bottom exhibit in the folder.

1 Q. Do you have any -- let me withdraw that.

2 I'd like to go back to the exhibit that is the
3 FAQ Exhibit, Exhibit 33.

4 A. (Witness reviewing screen.)

5 Okay.

6 Q. Same page, same section on page 1820.

7 And then there's a statement here that is --
8 that the approval or denial of any application is at the
9 discretion of the Special Event Permit Committee.

10 Do you have an understanding as to the outlines
11 of the -- and the level of the discretion that could be
12 exercised by the Special Event Permit Committee?

13 A. (Witness reviewing screen.)

14 I don't understand the concept of "outlines."

15 What do you mean?

16 Q. Were there any objective standards that had to
17 be applied as the Special Event Permit Committee
18 applied -- exercised its discretion?

19 MR. MASTER: I'm going to object. The question
20 is vague and ambiguous and overbroad. Lacks foundation.
21 Calls for speculation. Legal conclusion.

22 Go ahead.

23 THE WITNESS: I'm unaware if there were or were
24 not.

25 //

1 BY MR. MARKEVITCH:

2 Q. So you do not know if there were any set
3 procedures in place that would guide a committee or any
4 individual at Menlo Park in making a decision as to
5 whether to deny or approve a Special Event Permit
6 Application?

7 A. As far as set procedures, no, I'm unaware of
8 those.

9 Q. And when I talk about "set procedures," I'm
10 talking about procedures that may -- that are probably
11 written down.

12 Do we have that understanding?

13 A. Okay.

14 Q. So you're unaware of any written procedures in
15 that regard?

16 A. Correct.

17 Q. Are you aware of any limits to the exercise of
18 discretion by the Special Event Permit Committee that
19 were set forth within the City of Menlo Park?

20 MR. MASTER: I'm just going to object. The
21 question is vague, ambiguous and overbroad. Lacks
22 foundation. Calls for speculation. Calls for a legal
23 conclusion.

24 Go ahead.

25 THE WITNESS: I'm unaware of any limits except

1 for each of those -- each of those people -- or each of
2 those functions would have been able to exercise its
3 discretion as it relates to that specific box, whether it
4 was Police, Engineering, Planning -- I forget the other
5 boxes off the top of my head.

6 So each of them would have been able to provide
7 feedback and their expert opinion as to whether or not
8 there are community impacts that need to be noted.

9 BY MR. MARKEVITCH:

10 Q. Are you aware of any guidelines or procedures
11 for determining what community impacts are pertinent to a
12 review of a Permit Application such as Mr. Zeleny's?

13 MR. MASTER: I'm just going to object. The
14 question is hopelessly vague, ambiguous, and overbroad.
15 It's an incomplete hypothetical. Lacks foundation.
16 Calls for speculation.

17 Go ahead.

18 THE WITNESS: I'm unaware.

19 BY MR. MARKEVITCH:

20 Q. And would it be fair to say that the expert
21 opinion, as you've expressed that term, given by any
22 given department, would be given a lot of weight?

23 MR. MASTER: Objection. Vague, ambiguous, and
24 overbroad.

25 Go ahead.

1 If it's the same site as -- yes, I mean, I --
2 sitting here and looking at this right now, I don't know
3 if that's taking me to that specific site on Sand Hill,
4 but I believe it is, yes.

5 Q. Okay. Based on the information that you had
6 just looked at, in the context of a definition of what is
7 a Special Event, within the Special Event Permitting
8 process at the City of Menlo Park, would you agree that
9 this event, as proposed, qualifies as a Special Event?

10 A. I think it meets the criteria of a Special
11 Event, yes.

12 Q. Could you please open Exhibit 99.

13 A. (Witness reviewing screen.)

14 Okay.

15 Q. We looked at this earlier today.

16 This is July 21st, 2015, email from
17 Commander Bertini to several individuals.

18 Could you please --

19 A. Yes.

20 Q. Thank you.

21 I'm going to read the first sentence -- or the
22 first part of the first sentence of paragraph 2 of this
23 email.

24 It states, "Although we tend to deny this
25 application on several grounds, predominantly that this

1 is not a Special Event as defined by the city."

2 Do you have an understanding, based on this
3 document, this is something that Commander Bertini wrote
4 on July 21st, 2015?

5 MR. MASTER: I'll object it lacks foundation.
6 Calls for speculation. He's not the author. He's never
7 seen it before.

8 Go ahead.

9 THE WITNESS: Yes, based on what is written
10 there, it's indicating that Mr. Zeleny's application does
11 not seem to appear to be a Special Event, according to
12 Commander Bertini.

13 BY MR. MARKEVITCH:

14 Q. Do you agree with that conclusion by
15 Commander Bertini?

16 A. No.

17 Q. Do you agree with the idea that an application
18 would be presumed denied on this basis stated here, that
19 it's not a Special Event, before the process of the
20 review was completed?

21 MR. MASTER: I'm going to object to the
22 question. It's confusing and unintelligible. It's vague
23 and ambiguous and overbroad.

24 I don't understand; go ahead if you do.

25 //

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF SAN FRANCISCO)

4
5 I, the undersigned, a Certified Shorthand
6 Reporter of the State of California, do hereby certify:

7 That the foregoing proceedings were taken
8 before me at the time and place herein set forth; that
9 any witnesses in the foregoing proceedings, prior to
10 testifying, were placed under oath; that a verbatim
11 record of the proceedings was made by me using machine
12 shorthand which was thereafter transcribed under my
13 direction; further, that the foregoing is an accurate
14 transcription thereof.

15 I further certify that I am neither financially
16 interested in the action nor a relative or employee of
17 any attorney or any of the parties.

18 IN WITNESS WHEREOF, I have this date subscribed
19 my name.

20 Dated: September 10, 2020

21
22 

23
24 DAWN A. STARK
 CSR No. 7847

25

From: Al Serrato
To: Bertini, David C; Karen Guidotti; Steve Wagstaffe
Cc: McClure, William; Jonsen, Robert
Subject: Re: Open Carry Suspect - Michael Zeleny
Date: Tuesday, July 28, 2015 1:38:11 PM

Dave,

As you know from my earlier automated reply, I was away from the office last week. Sorry for the delay in getting back to you.

Thanks for keeping us informed on these developments. I would be more than happy to attend the meeting that you set up to provide whatever assistance I can. The questions that you're asking are difficult for me to answer definitively, as a filing decision always requires a particularized review of the facts and circumstances of the individual case and defendant. The sections you cite, PC 26350 and PC 26400, apply generally to the possession of unloaded firearms. Each section has a number of elements which must be met, concerning such things as the location of the firearm (upon the person or outside a vehicle), and each section is subject to a number of exemptions (see eg. PC 26361 et.seq. and PC 26405). While the arrest itself must be based upon probable cause, our review would require application of the higher "beyond a reasonable doubt" standard; we would also need to determine whether it is reasonably likely that a jury would convict.

As you note, PC 26405(r) is one of the exceptions to the law. We did some research on that subdivision during the last case but the law was not well defined. The section does not specify what agency is to provide the "authorization." If the City denies authorization, and no other agency grants it, we should be on solid legal ground in arguing that the subdivision does not apply; we would most likely have to litigate such an issue, as I can imagine a number of possible arguments the defendant could make. So, to answer your question, I would say it is possible, though unlikely, that 26405(r) would be deemed to apply.

I took a look at the link you provided, which is a cartoon depiction of what appears to be sexual intercourse. Section 647(j)(4) is a relatively new law and there is not a lot of guidance as to the extent of its application. Clearly, the intent was to prohibit photographs of actual persons. Whether "image" would encompass the cartoon depiction of a person is not entirely clear to me, but I suspect it would not. Additionally, the section requires proof that the person depicted suffers emotional distress. We would of course review any case that was submitted for filing, but those are my preliminary thoughts on the viability of using that section.

I hope this is of assistance. Please do not hesitate to contact me directly if you would like to discuss this further.

Best regards,

Al

Albert A. Serrato
Assistant District Attorney
San Mateo County
400 County Center, 3rd Floor
Redwood City, CA 94063
(650) 363-4823
>>> "Bertini, David C" <dcbertini@menlopark.org> 7/22/2015 11:43 AM >>>
Good morning Steve, Karen and Alberto.

We will be scheduling a meeting with all the effected entities in regards to open carry suspect Michael Zeleny, who has submitted the attached application for a "special event" in front of the NEA

EXHIBIT

0263

MP00

properties, which is also the site of the Rosewood Hotel and other businesses on Sand Hill Road. As you are aware, this subject has been “protesting” while heavily armed in this same location for several years. As a matter of fact, after open carry of handguns became illegal, a photo of Zeleny on one of his protests was used as evidence for the state legislation during a hearing for the new law prohibiting open carry of long guns.

As you also know, we had a case that went to trial against Zeleny for possession of a concealed handgun, in which one of his defenses was that he was involved in the making of a “motion picture”. Based on the attached application and email sent by Zeleny, it seems like he may be attempting to get around the open carry laws by saying his multimedia presentation falls under the exception to 26400 PC found in 26405(r) PC.

In discussions with our City Attorney Bill McClure, we are sure we are on solid ground to deny his application since his “event” does not comply with the City’s definition of a special event, and after completing the appropriate due diligence, we will notify him of the denial. This brings up several questions that we would like your opinion on:

- If Zeleny shows up without a permit for his “multimedia” presentation and is armed with the unloaded weapons he stated he would use, will your office go forward with prosecutions of 26350 and 26400 PC, if he is arrested for this violations (based of course that probable cause existed for the arrest)?
- Would the exception found in 26405(r) PC, be applicable even if he has not been properly permitted by the City?
- Could you review the image that Zeleny intends to display, and in case he does not have any openly carried guns, would this image be illegal pursuant to 370/372 PC or 647(4)(a) PC? (The image can be located at: <http://larvatus.livejournal.com/371973.html>)

I am also aware that Zeleny has field some kind of suit against your office, but am unsure in what forum he has don’t this, alleging false prosecution?

Thanks for your help on this and feel free to give me a call if you would like to discuss.

Dave

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: Bertini, David C
Sent: Tuesday, July 21, 2015 6:14 PM
To: 'David Tresmontan'; 'jimmy.mazon@rosewoodhotels.com'; 'tsanchez@smcgov.org'; Steve Wagstaffe; McClure, William (wlm@jsmf.com)
Cc: Dixon, William A; Jonsen, Robert (RJonsen@menlopark.org); Greg Munks (gmunks@co.sanmateo.ca.us)
Subject: RE: Special Event Permit Application

MP000297

Importance: High

Good afternoon all.

As you are aware, Michael Zeleny has submitted an application for a "special event" to be held somewhere in front of the Rosewood Hotel / NEA Property located at 2825 Sand Hill Road in Menlo Park. This "special event" would consist of a very similar protest he has conducted in the past, including carrying several unloaded military type firearms, along with a 55" display with sexually explicit caricatures, portable lighting and a generator. The application indicates a set up date of 9-30-15, with the event to be "ongoing" and "indefinite".

Although we intend to deny this application on several grounds (predominately that this is not a "special event" as defined by the City), we are in the process of requesting more information from him on the exact location he was intending as it was not clear on his application. Once we have gone through the formal information gathering process, we will notify him of our decision on his application.

In the meantime, I will be clearing up several legal issues with the District Attorney's Office and then scheduling a meeting with the entities involved (NEA, Rosewood Hotel, Menlo Park Police and City Attorney's Office, SMCO Sheriff's Office and the District Attorney's Office). At this meeting we can discuss our combined response in case Zeleny decides to proceed without a permit.

If those interested in attending can please check their availability the week of August 17th or the week of August 24th, I will set up a meeting to discuss our response to any possible action by Zeleny.

Feel free to contact me if you have any questions.

Thanks.

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: larvatus@gmail.com [<mailto:larvatus@gmail.com>] **On Behalf Of** Michael Zeleny
Sent: Friday, July 10, 2015 11:05 AM
To: McClure, William; Scott Sandell; Milde, Matt L; Police Chief
Cc: David W. Affeld; Peter Shimamoto
Subject: Special Event Permit Application

Michael Zeleny
michael@massmeans.com
zeleny@post.harvard.edu

MP000298

7576 Willow Glen Road, Los Angeles, CA 90046
voice:323.363.1860
fax:323.410.2373

City of Menlo Park
Matt Milde
Recreation Program Coordinator
mlmilde@menlopark.org
701 Laurel Street
Menlo Park, CA 94025
voice:650.330.2223
fax:650.330.2242

By email, fax, and postal mail.

Starting in October 2015, we shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu, and continuing until NEA publicly acknowledges its wrongdoing and severs its relationship with Min Zhu, Scott Sandell, and Dick Kramlich. I shall be present on site around the clock, served by support staff and equipped with fully operational, exposed and unloaded military grade firearms and loaded ammunition feeding devices therefor, including without limitation, a 9mm Para semiautomatic SIG P210 pistol, and a 7.65x51mm NATO semiautomatic LRB M25 rifle and tripod-mounted belt-fed Browning M1919a4, in full compliance with all applicable laws. A 55" portable media display powered by a portable gas generator will display videos featuring explicit representations of sexual violence committed by NEA's publicly disgraced protégé. A sample image can be found at <http://larvatus.livejournal.com/371973.html>. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park authorities. My fundamental rights under the First and Second Amendments of the Constitution of the United States are reserved and non-negotiable.

A site map can be found at <https://www.google.com/maps/@37.4197308,-122.2137188,17z/>. My display will be confined to the median strip on Sand Hill Road directly across the NEA headquarters. No obstruction of automotive or foot traffic will take place. Please contact me to arrange for the payment of the special event fee and discuss any organizational matters. Please address all legal inquiries and requests to David W. Affeld, Affeld Grivakes Zucker LLP, 2049 Century Park East, Suite 2460, Los Angeles, CA 90067, voice:310.979.8700, fax:310.979.8701.

cc:

Bill McClure
Menlo Park City Attorney
wlm@jsmf.com voice:650-330-6610
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
voice:650.324.9300
fax:650.324.0227

Robert Jonsen

Menlo Park Police Chief
policechief@menlopark.org
701 Laurel St.
Menlo Park, CA 94025
voice:[650.330.6600](tel:650.330.6600)

Scott Sandell
New Enterprise Associates
ssandell@nea.com
2855 Sand Hill Road
Menlo Park, CA 94025
United States
voice:[650.854.9499](tel:650.854.9499)
fax:[650.854.9397](tel:650.854.9397)

Michael@massmeans.com | Zeleny@post.harvard.edu | 7576 Willow Glen Road, Los Angeles,
CA 90046 | voice:323.363.1860 | fax:323.410.2373
<http://larvatus.livejournal.com> | "All of old. Nothing else ever. Ever tried. Ever failed. No
matter. Try again. Fail again. Fail better." — Samuel Beckett



City of Menlo Park 701 Laurel Street Menlo Park, CA 94025
Building Inspection Department
Phone:(650) 330-6704

PERMIT

Page 1 of 1

Permit No.: FILM2018-004 Project Address: 2180 SAND HILL RD

2/5/2018

Assessor's Parcel Number: 074283080

Project Name:

Type of Work:

Type Const:

Occupancy:

Applied: 2/5/2018

Issued: 2/5/2018

Permit To Do:

HBO Silicon Valley. Filming establishing shots from the sidewalks of Sand Hill Road along the block between Sharon Park Drive and Santa Cruz Avenue. No interference with traffic. With safety and precaution and by using cross walks, some shots may be taken from the median. Activity includes 10 crew, 1 cube truck and 1 van.

Expire Date:

Final:

Owner's Name:

Valuation:

Contractor: BROWN HILL PRODUCTIONS
10202 W. WASHINGTON BLVD DAVID LE
CULVER CITY CA 90232

Architect:

Engineer:

Designer:

PAID
FEB 05 2018

CITY OF MENLO PARK

<u>Fee Description</u>	<u>Fee Amount</u>	<u>Amount Paid</u>	<u>Date Paid</u>	<u>Balance Due</u>
Total Fees:	\$200	Total Fees Due:		

This receipt certifies that on the date(s) shown in the "Date Paid" column above, the City of Menlo Park imposed the above itemized fees, dedications, reservations or exactions (collectively "fees"). The project applicant is hereby notified that he/she has 90 calendar days from the date of payment as shown on this receipt to protest, in writing, in accordance with California Government Code §66020(a), any and all fees. Any party timely filing a protest may file an action to attack, review, set aside, void or annul the imposition of the fees within 180 days from the date of this notice.

**This permit shall be posted on job site until project
has received an approved final inspection**

EXHIBIT 73
JANIS JENNINGS, CSR, CCRR
(WITNESS) (DATE)

MP001722



GENERAL CONDITIONS OF PERMIT

Engineering Division
701 Laurel Street
Menlo Park, CA 94025

Notification of Work or Inspection Requests: (650) 330-6740

1. This permit, regardless of when dated, shall not be in effect until the applicant has obtained all licenses and other permits required by law.
2. This permit is declared **null and void** if work has not commenced three (3) months after the date of permit issuance.
3. Traffic control plan is required for work that will block public right-of-way. Plan shall include re-routing of vehicles, bicycles and pedestrians.
4. Any damages to existing facilities and improvements above ground or below ground, shall be promptly repaired or replaced at the permittee's expense, and claims for damage to City property must be promptly paid.
5. Applicant is responsible for determining exact locations or depths of existing utilities or other facilities. Call Underground Service Alert (USA) at 1-800-227-2600 a minimum of 48 hours prior to performing work.
6. Applicant carries sufficient insurance to work in the public right of way, and names City of Menlo Park as additional insured. Applicant agrees to keep insurance active for the duration of the project.
7. All work shall comply with the City and Caltrans Standards, including traffic control.
8. **Street Opening, Sidewalk, Curb and Gutter, and Driveway Permits.** Permittee shall notify the Public Works Inspector at least **24 hours prior to: beginning work, inspection requests, or concrete placement.** The number and type of inspections required, and any tests that may be required will be as directed by the Public Works Inspector. The Public Works Inspector may be contacted by calling (650) 330-6740.
9. All trench plates used in the public right of way must have a non-skid surface.
10. Construction activities are restricted to Monday through Friday (City holidays excepted) between the hours of 8:00 AM and 5:00 PM, unless otherwise approved in writing by the Engineering Services Division.
11. A faithful performance bond or a cash deposit in an amount equal to the estimated cost of the proposed work is required for curb and gutter, driveway, or street opening permits.
12. This grant of permission does not constitute a deed or grant of easement by the City, is not transferable or assignable and is revocable at any time at the will of the City.
13. This permit does not authorize tree trimming or tree removal.
14. The traffic control plan as attached must be adhered to at all times. *Note that the traffic control plan may have restricted working hours for working in the public right of way, which supersedes the standard encroachment permit working hours.*
15. The use of City property by permittee shall be limited to the purposes set forth by this permit and no structures of any kind, except those expressly permitted shall be erected or placed thereon.
16. Debris boxes/storage containers shall have reflectors so that they can be seen at night. This permit must be taped to the outside of debris boxes in a visible location.
17. This permit does not include overnight street parking for any vehicles. A separate parking permit can be obtained from the Police Department.
18. All stormwater BMP's must be in place between October 15th and April 15th, or as directed by the Public Works Inspector.
19. Additional conditions (if any) are attached to this permit and shall be followed accordingly.

Additional Conditions:



City of Menlo Park
Engineering Division
701 Laurel Street
Menlo Park, CA 94025
Telephone (650) 330-6740

PERMIT NO.: _____
Keep this permit at the work site at all times

Call 24 hours in advance of working in the public right
of way AND for each inspection request.
Uninspected work will be rejected.

ENCROACHMENT PERMIT APPLICATION

- ☐ Major Encroachment
☐ Minor Encroachment

- ☐ Temporary Encroachment
☐ Debris or Container Box

☒ Other FILM PERMIT
☐ City-Mandated Repairs

ONE PERMIT PER ADDRESS

Location of Work <u>Sidewalk of Sand Hill Rd - between Sharon Park Dr + Santa Cruz Ave</u>		Applicant Represents <input checked="" type="checkbox"/> Production Company <input type="checkbox"/> Contractor <input type="checkbox"/> Owner		Applicant e-mail: <u>CarolynMSchulze@gmail.com</u> Applicant fax: _____		
Name of Applicant (person) <u>Carolyn Schulte</u>	Address <u>10202 W. Washington Blvd. Redwood Canyon</u>	City <u>Culver City</u>	State <u>CA</u>	Zip <u>90232</u>	Telephone <u>(310) 595-4006</u>	
Name of Contractor	Address	City	State	Zip	Telephone	
California Construction License No.	Menlo Park Business License No.	Est. Start Date <u>Tues 2/6/18</u>	Est. Complete Date <u>Tues 2/16/18</u>			
Estimated Construction Cost (Estimate work in city R/W only. Do not include value of utility.) \$ _____	Bond or Deposit * \$ _____	Bond or Deposit provided by: <input type="checkbox"/> Contractor <input type="checkbox"/> Owner <input type="checkbox"/> Other (provide name, company, address)				
Description of work to be done: <u>Filming establishing shot(s) from sidewalk of Sand Hill Rd along the block between Sharon Park Dr and Santa Cruz Ave. No interference of traffic.</u> <u>(Activity includes 10 crew, 1 cube truck with equipment, 1 van (passenger))</u>		Applicant submits the following: <input type="checkbox"/> 3 copies of sketch or plans <input type="checkbox"/> 3 copies of traffic control plans <input type="checkbox"/> Insurance certificate				

Call Underground Service Alert (USA) at 1-800-227-2600 before you dig

GENERAL CONDITIONS OF PERMIT ATTACHED.

Signature below acknowledges that special working hours may apply – check the approved traffic control plan.

I hereby acknowledge that I have read this permit and the attached conditions, that the information given by me is correct, that I am the owner or the duly authorized agent of the owner, and that I agree to comply with the conditions and all applicable provisions of state laws, city ordinances, and the rules of any governmental agency involved.

Carolyn Schulte
Signature of Applicant
(Owner or authorized agent)

Location Manager
Title

1-31-18
Date

DO NOT WRITE BELOW THIS LINE -- CITY STAFF USE ONLY

Approved by Engineering Division	Date <u>2/5/18</u>	Permit expires	Fees (retained by City)	\$
<u>Jane Doe</u>		Total Due to City	<input type="checkbox"/> Paid	\$

* Bond or deposit requests must originate from the bond/deposit provider. A copy of the original receipt must accompany the refund request. All deposits or bonds are subject to forfeiture to comply with City Codes and Ordinances.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/1/18

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MARSH USA, INC.
1166 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

CONTACT

NAME:

PHONE

(A/C, No, Ext):

FAX

(A/C, No):

E-MAIL

ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: ACE American Insurance Company

22667

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

067062-TBS-GAW-17-18

INSURED

Brown Hill Productions, LLC
10202 W. Washington Blvd.
David Lean Building
Culver City, CA 90232

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		HDO G27867662	06/01/2017	06/01/2018	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		ISA H09060686	06/01/2017	06/01/2018	COMBINED SINGLE LIMIT (Per accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTIONS					EACH OCCURRENCE \$ AGGREGATE \$ DED \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Production: "Silicon Valley" Season 5

Certificate Holder, including its officials, employees and agents are included as an additional insured where required by contract.

CERTIFICATE HOLDER

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Kimberly Parks

Kimberly Parks

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SILICON VALLEY

Menlo Park Location:

Sidewalk along Sand Hill Road between Sharon Park Drive and Santa Cruz Avenue, Menlo Park, CA
(Shooting exteriors along Sand Hill Rd)

Dates:

Shoot: Tuesday, February 6th

8:00AM – 5:00PM

Activity:

Exterior establishing shot. Camera on sidewalk only. If possible, we'd like to potentially place camera on the median – if you are okay with it. We can work on sidewalk only if needed. Possible drive bys with 1-2 cars with flow of traffic.

Crew / Equipment:

10 Crew / 1 Camera cube, 1 van, 1 portable restroom

Parking / Posting Requested: (For Tuesday 2/6)

(1) NO Posting needed



Film Production in Menlo Park

Film production in the City of Menlo Park must comply with following conditions:

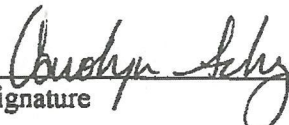
1. Permittee shall submit in writing all pertinent details regarding the filming including the date(s) and times of the filming including time needed for set-up and take down; a description of the nature of the filming; the location of the filming; a list of all equipment involved in the filming, including cars and other vehicles; the proposed location for the parking and storage of all such vehicles and equipment; the number of cast and crew members involved in the filming; and an indication of any special needs, such as amplified noise, etc. If granted, the permit's approval will be confined to such activities, locations and time schedules as submitted and approved.
2. Three days prior to the beginning of filming, permittee shall provide written notice to residents and businesses within 200 feet of the proposed filming.
3. Permittee shall obey all City Ordinances, rules and the guidance of City supervisory employees pertaining to the use of City property, including the location, parking and storage of vehicles and equipment, crowd and traffic control, and the restoration of premises to their original condition after use for filming purposes.
4. Permittee will comply with the City of Menlo Park noise ordinance. Filming will be limited to the hours between 8:00 a.m. and 6:00 p.m. and will result in low to no noise levels. The use of any explosive, fireworks, or pyrotechnic devices is strictly prohibited.
5. Permittee shall make arrangements for traffic control satisfactory to the Menlo Park Police Department prior to filming on City streets and in other public areas. Permittee will be charged to recover the cost of traffic control provided by the City. Permittee will legally park vehicles and will not require street closure or traffic control other than what is approved.
6. Permittee shall covenant and agree to indemnify and hold harmless the City from any and all loss, cost, damages and expenses of any kind, including attorney fees, on account of personal injury or property damage resulting from any activity of Permittee on municipal property or in connection with its use of municipal property.
7. Liability insurance in no way limits the indemnity agreement above, Permittee will furnish the City a Certificate of Liability Insurance acceptable to its Risk Management office showing combined single limit coverage for bodily injury and property damage, or the equivalent of such coverage, not less than \$1 million. The City, including its officials, employees and agents, shall be named as additional insured in the Liability Policy. Contractual liability coverage insuring the obligations of this Agreement is also required. The insurance may not be canceled or substantially modified without ten (10) days written notice to the City Manager's Office.

8. Permittee shall pay, with a valid check, money order, credit card or cashier's check, a **filming permit application fee of \$150.00 in addition to the daily permit fees of \$50 per day for still photography and short subject, \$100 per day for industrials, and \$150 per day for features, TV, music videos and commercials.**
9. Permittee shall apply for a one-time Business License and pay, with a valid check, money order, credit card or cashiers check. **See Guide to Annual Business Licensee Fee Calculation for the fee schedule.**
10. Permittee will adhere to the provisions and conditions set forth in the permit. If Menlo Park Police Department or other City personnel are required to correct, mitigate, or provide any service not consented to under this permit, permittee will be required to pay for all services rendered. Payment shall be made in the form of *a valid check, money order, credit card or cashiers check* immediately upon demand made by the City.

PROJECT ADDRESS: Sand Hill Rd between Sharon Park Drive and Santa Cruz Ave, Menlo Park

Read and agreed on:

Date: 1-31-18


Signature

Carolyn Schultz
Print name

TODD H. MASTER [SBN. 185881]
tmaster@hrmrlaw.com
HOWARD ROME MARTIN & RIDLEY LLP
1900 O'Farrell Street, Suite 280
San Mateo, CA 94403
Telephone: (650) 365-7715
Facsimile: (650) 364-5297

Attorneys for Defendant
CITY OF MENLO PARK and
DAVE BERTINI

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS

**DEFENDANT CITY OF MENLO PARK'S
RESPONSE TO PLAINTIFF'S
INTERROGATORIES**

RESPONDING PARTY: Defendant CITY OF MENLO PARK

PROPOUNDING PARTY: Plaintiff MICHAEL ZELENY

SET NUMBER: One (1)

COMES NOW responding party and answers the interrogatories of the propounding party.
The answers to these interrogatories are based upon the knowledge and information available to the
responding party as of the date of these answers. Responding party has not yet completed its

1 investigation and discovery in this action and thus reserves the right to introduce at trial any
2 information not included in these answers obtained through investigation and discovery subsequent
3 to the date of these answers. Responding party also has not yet completed its review and analysis
4 of the information it presently possesses, and reserves the right to introduce at trial any information
5 not included in these answers which is warranted by subsequent review or analysis. Responding
6 party further reserves the right to amend the answers to these interrogatories and to correct any
7 inadvertent errors and/or omissions.

8 **INTERROGATORY NO. 1:**

9 For each denial and affirmative defense in your Answer in this action, state all facts upon
10 which such denial or affirmative defense is based.

11 **RESPONSE TO INTERROGATORY NO. 1:**

12 Objection. The City objects to this interrogatory to the extent it is vague, ambiguous and
13 overbroad. This interrogatory is also compound. In addition, the City objects to this interrogatory
14 to the extent it seeks the premature disclosure of expert opinion testimony in violation of the
15 attorney work product doctrine.

16 The City further objects to the extent this interrogatory is premature as, to date, the City has
17 not completed necessary discovery in the litigation and plaintiff has refused to appear for his
18 noticed deposition. As such, this interrogatory seeks to impose an unfair and unreasonable burden
19 on the City. The Federal Rules of Civil Procedure and relevant case law require a defendant to
20 assert all applicable or potentially applicable affirmative defenses at the outset of the litigation, and
21 prior to discovery, or risk waiver of those affirmative defenses. As discovery progresses, the City
22 will seek to develop the factual basis for each of its affirmative defenses. The City will withdraw
23 those affirmative defenses for which factual bases are not developed during discovery.

24 Without waiving these objections, the City respectfully refers plaintiff to the documents it
25 will be producing in response to plaintiff's request for production of documents, sets one and two.

26 ///

Without waiving these objections, the City respectfully refers plaintiff to the names of those persons identified in the documents it will be producing in response to plaintiff's request for production of documents, sets one and two.

INTERROGATORY NO. 3:

For each denial and affirmative defense in your Answer in this action, IDENTIFY all documents that support such denial or defense.

RESPONSE TO INTERROGATORY NO. 3:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous and overbroad. This interrogatory is also compound. In addition, the City objects to this interrogatory to the extent it seeks the premature disclosure of expert opinion testimony in violation of the attorney work product doctrine.

The City further objects to the extent this interrogatory is premature as, to date, the City has not completed necessary discovery in the litigation and plaintiff has refused to appear for his noticed deposition. As such, this interrogatory seeks to impose an unfair and unreasonable burden on the City. The Federal Rules of Civil Procedure and relevant case law require a defendant to assert all applicable or potentially applicable affirmative defenses at the outset of the litigation, and prior to discovery, or risk waiver of those affirmative defenses. As discovery progresses, the City will seek to develop the factual basis for each of its affirmative defenses. The City will withdraw those affirmative defenses for which factual bases are not developed during discovery.

Without waiving these objections, the City respectfully refers plaintiff to the documents it will be producing in response to plaintiff's request for production of documents, sets one and two.

INTERROGATORY NO. 4:

IDENTIFY any law, rule, regulation, ordinance, or policy of the City of Menlo Park or the State of California that Zeleny would violate by engaging in the protests he has proposed to the City of Menlo Park (including the carrying of unloaded firearms).

Without waiving these objections, the City cannot readily answer this interrogatory without knowing the specifics of the “protests” he references herein. Generally speaking, the City does not require that persons obtain a permit to express their First Amendment rights. However, depending on the particular circumstances and facts, the City may place reasonable time, place and manner restrictions on protests and/or require a permit.

INTERROGATORY NO. 6:

State all facts that support your response to the preceding Interrogatory.

RESPONSE TO INTERROGATORY NO. 6:

The City hereby respectfully refers to, and incorporates herein, its objections and response to the “preceding Interrogatory”.

INTERROGATORY NO. 7:

IDENTIFY all policies, procedures, guidelines, rules, regulations, ordinances, laws, or guidelines that support your response to the preceding two Interrogatories.

RESPONSE TO INTERROGATORY NO. 7:

The City hereby respectfully refers to, and incorporates herein, its objections and response to the “preceding two Interrogatories”.

INTERROGATORY NO. 8:

IDENTIFY each policy, procedure, rule, regulation, ordinance, guideline, or guidance of the City of Menlo Park governing applications for permits of the types that Zeleny has sought from the City of Menlo Park.

RESPONSE TO INTERROGATORY NO. 8:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and overbroad. The interrogatory is also compound. Plaintiff does not identify with any particularity what “permits” he is referring to in this interrogatory and thus it is confusing and unintelligible. The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert

1 opinion and is thus violative of the attorney work product doctrine. The City also objects to the
2 extent this interrogatory seeks information that is protected by the attorney-client privilege.

3 Without waiving these objections, the City respectfully refers plaintiff to the documents
4 that are being produced herewith, in response to plaintiff's request for production of documents, set
5 one.

6 **INTERROGATORY NO. 9:**

7 IDENTIFY each and every criteria used by the City of Menlo Park in acting upon
8 applications or requests for permits for the type that Zeleny has sought from the City of Menlo
9 Park.

10 **RESPONSE TO INTERROGATORY NO. 9:**

11 Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and
12 overbroad. The interrogatory is also compound. Plaintiff does not identify with any particularity
13 what "permits" he is referring to in this interrogatory and thus it is confusing and unintelligible.
14 The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert
15 opinion and is thus violative of the attorney work product doctrine. The City also objects to the
16 extent this interrogatory seeks information that is protected by the attorney-client privilege.

17 Without waiving these objections, the City respectfully refers plaintiff to the documents
18 that are being produced herewith, in response to plaintiff's request for production of documents, set
19 one.

20 **INTERROGATORY NO. 10:**

21 IDENTIFY each document that has reflected, embodied, contained, or described the criteria
22 for issuance of the types of permits that Zeleny has sought from the City of Menlo Park.

23 **RESPONSE TO INTERROGATORY NO. 10:**

24 Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and
25 overbroad. The interrogatory is also compound. Plaintiff does not identify with any particularity
26 what "permits" he is referring to in this interrogatory and thus it is confusing and unintelligible.

RESPONSE TO INTERROGATORY NO. 16:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and overbroad. The interrogatory is also unduly burdensome. The City respectfully refers plaintiff to the County of San Mateo, which can more readily and correctly provide the requested information.

Without waiving these objections, the City respectfully refers plaintiff to the City business licenses being produced herewith.

INTERROGATORY NO. 17:

Describe in detail each complaint received by the City of Menlo Park involving Zeleny's protests in the past five years.


RESPONSE TO INTERROGATORY NO. 17:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and overbroad. The interrogatory is also unduly burdensome and, as framed, seeks information that is relevant to this litigation. Further, plaintiff does not identify with any particularity what he means by "complaint" and thus it is confusing and unintelligible.

Without waiving these objections, the City respectfully refers plaintiff to the documents that are being produced herewith in response to plaintiff's request for production, set one.

Date: February 25, 2019

HOWARD ROME MARTIN & RIDLEY LLP

By: 
Todd H. Master
Attorneys for Defendants
CITY OF MENLO PARK and
DAVE BERTINI

VERIFICATION

I, Dave Bertini, say:

I am the Chief of Police for the City of Menlo Park, and am a party in the above-entitled action. I have read the following and know the contents thereof and am informed and believe that the matters stated therein are true:

Defendant City of Menlo Park's Response to Plaintiff's Special Interrogatories (Set 1);

Defendant City of Menlo Park's Response to Plaintiff's Special Interrogatories (Set 2);

and

Defendant Dave Bertini's Response to Plaintiff's Special Interrogatories (Set 1).

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 26th day of February, 2019, at Menlo Park, California.



Dave Bertini

Michael Zeleny v. Edmund G. Brown, Jr., et al.
United States District Court; Case No. 17-cv-07357-RS

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN MATEO:

I am a citizen of the United States and employed in the county aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 1900 O'Farrell Street, Suite 280, San Mateo, CA 94403. On the date set forth below I served the **DEFENDANT CITY OF MENLO PARK'S RESPONSE TO PLAINTIFF'S INTERROGATORIES, SET ONE** on the following person(s) in this action:

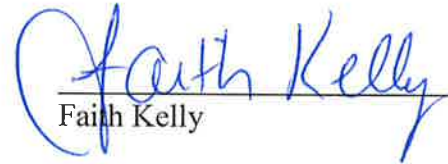
David W. Affeld, Esq. Affeld Grivalkes LLP 2049 Century Park East, Suite 2460 Los Angeles, CA 90067 Telephone: (310) 979-8700 Facsimile: (310) 979-8701 Email: dwa@agzlaw.com	ATTORNEYS FOR PLAINTIFF MICHAEL ZELNY
Xavier Becerra Attorney General of California Anthony R. Hakl Supervising Deputy Attorney General Emmanuelle S. Soichet Deputy Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 510-3861 Facsimile: (415) 703-1234 Email: Emmanuelle.Soichet@doj.ca.gov	ATTORNEYS FOR DEFENDANTS ATTORNEY GENERAL XAVIER BECERRA
Noreen P. Skelly Deputy Attorney General 1300 I Street, Suite 125 P. O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 210-6057 Facsimile: (916) 324-8835 Email: Noreen.Skelly@doj.ca.gov	ATTORNEYS FOR DEFENDANT ATTORNEY GENERAL XAVIER BECERRA

☒ (VIA MAIL -- CCP §§ 1013(a), 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the U.S. Postal Service and correspondence placed for collection and mailing would be deposited in the U.S. Postal Service at Redwood City, California, with postage thereon fully prepaid, that same day in the ordinary course of business.

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- ☐ (VIA PERSONAL DELIVERY -- CCP §§ 1011, 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and causing each envelope(s) to be hand delivered on that day by _____, in the ordinary course of my firm's business practice.
- ☐ (VIA FACSIMILE -- CCP §§ 1013(e), 2015.5, CRC 2008) By arranging for facsimile transmission from facsimile number 650/364-5297 to the above-listed facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of collection and processing of correspondence via facsimile transmission(s) and any such correspondence would be transmitted in the ordinary course of business. The facsimile transmission(s) was reported as complete and without error, and a copy of the transmission report is attached.
- ☐ (VIA OVERNIGHT MAIL/COURIER -- CCP §§ 1013(c), 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection by overnight mail service or overnight courier service. I am familiar with my firm's business practice of collection and processing of correspondence for overnight mail or overnight courier service, and my correspondence placed for collection for overnight delivery would, in the ordinary course of business, be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on **March 1, 2019**, at San Mateo, California.


Faith Kelly

TODD H. MASTER [SBN. 185881]
tmaster@hrmrlaw.com

HOWARD ROME MARTIN & RIDLEY LLP

1900 O'Farrell Street, Suite 280

San Mateo, CA 94403

Telephone: (650) 365-7715

Facsimile: (650) 364-5297

Attorneys for Defendant

CITY OF MENLO PARK and

DAVE BERTINI

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS

**DEFENDANT CITY OF MENLO PARK'S
SUPPLEMENTAL RESPONSE TO
PLAINTIFF'S INTERROGATORIES**

RESPONDING PARTY: Defendant CITY OF MENLO PARK

PROPOUNDING PARTY: Plaintiff MICHAEL ZELENY

SET NUMBER: One (1)

COMES NOW responding party and answers the interrogatories of the propounding party.

The answers to these interrogatories are based upon the knowledge and information available to the responding party as of the date of these answers. Responding party has not yet completed its

investigation and discovery in this action and thus reserves the right to introduce at trial any information not included in these answers obtained through investigation and discovery subsequent to the date of these answers. Responding party also has not yet completed its review and analysis of the information it presently possesses and reserves the right to introduce at trial any information not included in these answers which is warranted by subsequent review or analysis. Responding party further reserves the right to amend the answers to these interrogatories and to correct any inadvertent errors and/or omissions.

INTERROGATORY NO. 1:

For each denial and affirmative defense in your Answer in this action, state all facts upon which such denial or affirmative defense is based.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous and overbroad. This interrogatory is also compound. In addition, the City objects to this interrogatory to the extent it seeks the premature disclosure of expert opinion testimony in violation of the attorney work product doctrine.

This interrogatory seeks to impose an unfair and unreasonable burden on the City. The Federal Rules of Civil Procedure and relevant case law require a defendant to assert all applicable or potentially applicable affirmative defenses at the outset of the litigation, and prior to discovery, or risk waiver of those affirmative defenses. As discovery progresses, the City will seek to develop the factual basis for each of its affirmative defenses.

Without waiving these objections, pursuant to FRCP 33(d), responding party respectfully refers plaintiff to the following documents that have previously been produced by the City in this litigation and/or identified as exhibits to depositions which support the City's affirmative defenses: MP000001 – 5, MP00007 – 19, MP000023 – 31, MP000036 – 40, MP000042 – 47, MP000050 – 52, MP000059 – 60, MP000067, MP000080 – 83, MP000096 - 97, MP000100 – 101, MP000105 – 107, MP000114 – 119, MP000121 – 122, MP000126 – 127, MP000131 – 132, MP000135 - 147,

MP000151 – 179, MP000182 – 204, MP000218 - 221, MP000234 – 242, MP000257 – 274,
MP000285 – 305, MP000321 – 324, MP000329 – 344, MP000351 – 370, MP000373 – 382,
MP000390 – 401, MP000435 – 450, MP000463 – 467, MP000473 – 486, MP000492 – 498,
MP000501 – 505, MP000566 – 577, MP000582 – 583, MP000601 – 602, MP000633, MP000680
– 683, MP000685 – 704, MP000717 – 722, MP000750 – 755, MP000758 – 763, MP000771 – 800,
MP000809 – 826, MP000834 – 858, MP000863 – 866, MP000867 – 872, MP000879 – 881,
MP000883 – 886, MP000902 – 903, MP000948 – 1205, MP001218 - 1222, MP001229 – 1238,
MP001242 – 1253, MP001268 – 1272, MP001279 – 1283, MP001290 – 1299, MP001311 – 1321,
MP001331 – 1341, MP001353 – 1367, MP001381 – 1426, MP001449 – 1566, MP001567 – 1779,
MP001838 – 1841, MP001842, MP001843 – 1901, MP001902 – 4888, MP004889 – 5083,
MP005084 – 5099, MP005100 – 5520, the audio recording from plaintiff's appeal hearing before
City Manager, video-recording of plaintiff's appeal to City Council of Menlo park, Audio-
recordings of Menlo Park Police Department Case Nos. 10-2666, 10-2678, 10-2687, 10-2700, 10-
2712, 10-2739, 12-495, 12-1596, 12-1805, 12-1824, 12-1903 and 12-1914, MP005521 – 5529,
MP006074-6617, MP001792 -1831, and <https://www.menlopark.org/292/Special-event-permits>.

In addition, the City has recently discovered and contends that it never had legal authority
to issue plaintiff a permit to perform any activity on the center median of Sand Hill Road as set
forth in his application to the City of Menlo Park for a special event permit because the center
median is owned, operated and controlled by the State of California and is within the State of
California's right-of-way.

INTERROGATORY NO. 2:

For each denial and affirmative defense in your Answer in this action, IDENTIFY all
persons with knowledge of any facts supporting such denial or affirmative defense is based.

[For purposes of these Interrogatories, "IDENTIFY" means:

- 1 (a) With respect to the person or entity, to state his, her, or its name, title, capacity, and last
2 known contact information, including address, telephone number, and email address (if
3 known);
- 4 (b) With respect to a document, to state the nature of the document (e.g., memorandum,
5 letter, e-mail), title or subject line of the document, its general substance or subject
6 matter, the author, sender, and all recipients (including persons "copied," or "blind
7 copied"), and the date of its creation;
- 8 (c) With respect to a law, policy, procedure, rule, regulation, ordinance, guideline, or
9 guidance, and the source of the same.

10 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

11 Objection. The City objects to this interrogatory to the extent it is vague, ambiguous and
12 overbroad. This interrogatory is also compound. In addition, the City objects to this interrogatory
13 to the extent it seeks the premature disclosure of expert opinion testimony in violation of the
14 attorney work product doctrine.

15 This interrogatory seeks to impose an unfair and unreasonable burden on the City. The
16 Federal Rules of Civil Procedure and relevant case law require a defendant to assert all applicable
17 or potentially applicable affirmative defenses at the outset of the litigation, and prior to discovery,
18 or risk waiver of those affirmative defenses. As discovery progresses, the City will seek to develop
19 the factual basis for each of its affirmative defenses.

20 Without waiving these objections, pursuant to FRCP 33(d), responding party respectfully
21 refers plaintiff to the following documents that identify persons with said knowledge: MP000001 –
22 5, MP000007 – 19, MP000023 – 31, MP000036 – 40, MP000042 – 47, MP000050 – 52, MP000059
23 – 60, MP000067, MP000080 – 83, MP000096 - 97, MP000100 – 101, MP000105 – 107,
24 MP000114 – 119, MP000121 – 122, MP000126 – 127, MP000131 – 132, MP000135 - 147,
25 MP000151 – 179, MP000182 – 204, MP000218 - 221, MP000234 – 242, MP000257 – 274,
26 MP000285 – 305, MP000321 – 324, MP000329 – 344, MP000351 – 370, MP000373 – 382,

1 MP000390 – 401, MP000435 – 450, MP000463 – 467, MP000473 – 486, MP000492 – 498,
2 MP000501 – 505, MP000566 – 577, MP000582 – 583, MP000601 – 602, MP000633, MP000680
3 – 683, MP000685 – 704, MP000717 – 722, MP000750 – 755, MP000758 – 763, MP000771 – 800,
4 MP000809 – 826, MP000834 – 858, MP000863 – 866, MP000867 – 872, MP000879 – 881,
5 MP000883 – 886, MP000902 – 903, MP000948 – 1205, MP001218 - 1222, MP001229 – 1238,
6 MP001242 – 1253, MP001268 – 1272, MP001279 – 1283, MP001290 – 1299, MP001311 – 1321,
7 MP001331 – 1341, MP001353 – 1367, MP001381 – 1426, MP001449 – 1566, MP001567 – 1779,
8 MP001838 – 1841, MP001842, MP001843 – 1901, MP001902 – 4888, MP004889 – 5083,
9 MP005084 – 5099, MP005100 – 5520, the audio recording from plaintiff's appeal hearing before
10 City Manager, video-recording of plaintiff's appeal to City Council of Menlo park, Audio-
11 recordings of Menlo Park Police Department Case Nos. 10-2666, 10-2678, 10-2687, 10-2700, 10-
12 2712, 10-2739, 12-495, 12-1596, 12-1805, 12-1824, 12-1903 and 12-1914, MP005521 – 5529,
13 MP006074-6617, MP001792 -1831 and <https://www.menlopark.org/292/Special-event-permits>.
14 The City's interim Public Works Director, Nikki Nagaya, has knowledge concerning the CalTrans
15 right-of-way issue.

16 **INTERROGATORY NO. 3:**

17 For each denial and affirmative defense in your Answer in this action, IDENTIFY all
18 documents that support such denial or defense.

19 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

20 Objection. The City objects to this interrogatory to the extent it is vague, ambiguous and
21 overbroad. This interrogatory is also compound. In addition, the City objects to this interrogatory
22 to the extent it seeks the premature disclosure of expert opinion testimony in violation of the
23 attorney work product doctrine.

24 This interrogatory seeks to impose an unfair and unreasonable burden on the City. The
25 Federal Rules of Civil Procedure and relevant case law require a defendant to assert all applicable
26 or potentially applicable affirmative defenses at the outset of the litigation, and prior to discovery,

1 or risk waiver of those affirmative defenses. As discovery progresses, the City will seek to develop
2 the factual basis for each of its affirmative defenses.

3 Without waiving these objections, pursuant to FRCP 33(d), responding party respectfully
4 refers plaintiff to the following documents that have previously been produced by the City in this
5 litigation and/or identified as exhibits to depositions: MP000001 – 5, MP000007 – 19, MP000023 –
6 31, MP000036 – 40, MP000042 – 47, MP000050 – 52, MP000059 – 60, MP000067, MP000080 –
7 83, MP000096 - 97, MP000100 – 101, MP000105 – 107, MP000114 – 119, MP000121 – 122,
8 MP000126 – 127, MP000131 – 132, MP000135 - 147, MP000151 – 179, MP000182 – 204,
9 MP000218 - 221, MP000234 – 242, MP000257 – 274, MP000285 – 305, MP000321 – 324,
10 MP000329 – 344, MP000351 – 370, MP000373 – 382, MP000390 – 401, MP000435 – 450,
11 MP000463 – 467, MP000473 – 486, MP000492 – 498, MP000501 – 505, MP000566 – 577,
12 MP000582 – 583, MP000601 – 602, MP000633, MP000680 – 683, MP000685 – 704, MP000717
13 – 722, MP000750 – 755, MP000758 – 763, MP000771 – 800, MP000809 – 826, MP000834 – 858,
14 MP000863 – 866, MP000867 – 872, MP000879 – 881, MP000883 – 886, MP000902 – 903,
15 MP000948 – 1205, MP001218 - 1222, MP001229 – 1238, MP001242 – 1253, MP001268 – 1272,
16 MP001279 – 1283, MP001290 – 1299, MP001311 – 1321, MP001331 – 1341, MP001353 – 1367,
17 MP001381 – 1426, MP001449 – 1566, MP001567 – 1779, MP001838 – 1841, MP001842,
18 MP001843 – 1901, MP001902 – 4888, MP004889 – 5083, MP005084 – 5099, MP005100 – 5520,
19 the audio recording from plaintiff's appeal hearing before City Manager, video-recording of
20 plaintiff's appeal to City Council of Menlo park, Audio-recordings of Menlo Park Police
21 Department Case Nos. 10-2666, 10-2678, 10-2687, 10-2700, 10-2712, 10-2739, 12-495, 12-1596,
22 12-1805, 12-1824, 12-1903 and 12-1914, MP005521 – 5529, MP006074-6617, MP001792 -1831
23 and <https://www.menlopark.org/292/Special-event-permits>.

24 In addition, the City respectfully refers plaintiff to the following documents which support
25 the City's contention that it does not own, control or maintain the center median where plaintiff
26 desired to hold the protest that was part of his special event application to the City: Freeway

Maintenance Agreement dated September 16, 1969, Resolution No. 2276 of the City Council for Menlo Park Approving Freeway Maintenance Agreement, the July 1, 1972 Agreement for Maintenance of State Highway in the City of Menlo Park, City of Menlo Park Resolution No. 2559 Approving Agreement for Maintenance of State Highway in the City of Menlo Park, Amendment 1 to Agreement for Maintenance of State Highways in City of Menlo Park, Caltrans D4 Right of Way Map, Agreement for Maintenance of State Highway in the City of Menlo Park dated November 21, 1972, and Amendment No. 2 to Agreement for Maintenance of State Highways in City of Menlo Park dated October 18, 2017. These documents are being produced herewith as MP006618 – 6682. To the extent it may also potentially be responsive, the City respectfully refers plaintiff to the Caltrans Encroachment Permits Manual, which is equally available to plaintiff at <https://dot.ca.gov/programs/traffic-operations/ep/ep-manual>. Chapter 514 refers to Special Event permits.

INTERROGATORY NO. 4:

IDENTIFY any law, rule, regulation, ordinance, or policy of the City of Menlo Park or the State of California that Zeleny would violate by engaging in the protests he has proposed to the City of Menlo Park (including the carrying of unloaded firearms).

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and overbroad. The interrogatory, as framed, is also confusing and unintelligible since it is an incomplete hypothetical. Plaintiff does not identify with any particularity in this interrogatory what he means by “protests” referenced herein and what those “protests” would entail. The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert opinion and is thus violative of the attorney work product doctrine.

Without waiving these objections, to the extent this interrogatory asks the City to identify California law that may apply to the carrying of unloaded firearms in the course of the protest that plaintiff identified in his July 10, 2015 application for a special event permit, the City respectfully

“protests” referenced herein, making it impossible for the City to respond. The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert opinion and is thus violative of the attorney work product doctrine.

Without waiving these objections, the City cannot readily answer this interrogatory without knowing the specifics of the “protests” he references herein. Generally speaking, the City does not require that persons obtain a permit to express their First Amendment rights. However, depending on the particular circumstances and facts of the conduct, the City may place reasonable time, place and manner restrictions on protests and/or require a permit. With regard to plaintiff’s desire to carry unloaded firearms within City limits as part of his protest and/or film event, the City has informed plaintiff that should he complete his application for a film permit and obtain a film permit from the City, the City would authorize plaintiff to openly carry unloaded weapons in conjunction with the terms of that permit. Pursuant to FRCP 33(d), responding party respectfully refers plaintiff to California Penal Code §§ 26350, 26375, 26400 and 26405(r), and documents previously produced in this litigation: MP001229 – 1238, MP001279 – 1283, MP001331 – 1341, MP001381 – 1382, MP001403 – 1404, MP001413 – 1414 and 001842. To the extent it may also potentially be responsive, the City respectfully refers plaintiff to those documents being produced herewith (MP006618-6682) and the Caltrans Encroachment Permits Manual, which is equally available to plaintiff at <https://dot.ca.gov/programs/traffic-operations/ep/ep-manual>. Chapter 514 refers to Special Event permits.

INTERROGATORY NO. 8:

IDENTIFY each policy, procedure, rule, regulation, ordinance, guideline, or guidance of the City of Menlo Park governing applications for permits of the types that Zeleny has sought from the City of Menlo Park.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and overbroad. The interrogatory is also compound. Plaintiff does not identify with any particularity

1 what "permits" he is referring to in this interrogatory and thus it is confusing and unintelligible.
2 The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert
3 opinion and is thus violative of the attorney work product doctrine. The City also objects to the
4 extent this interrogatory seeks information that is protected by the attorney-client privilege.

5 Without waiving these objections, pursuant to FRCP 33(d), responding party respectfully
6 refers plaintiff to those written communications between plaintiff and representatives of the City as
7 they relate to his special event permit and film permit applications to the City, which include
8 MP000236 – 240, 270- 274, 285-289, 291-292, 346-347, 352-355, 357-360, 362-365, 367-370,
9 373-376, 379-382, 440-444, 447-450, 463-465, 475-477, 479-480, 484, 486, 492, audio recording
10 of plaintiff's appellate hearing (special event permit application) before City Manager Alex
11 McIntyre, MP000948-1064, 1068-1183, 1449-1566, 1196-1205, video/audio recording of
12 plaintiff's appellate hearing (Special event permit application) before Menlo Park City Council,
13 MP001213-1214, 1219-1220, 1221, 1229-1238, 1248-1249, 1279-1283, 1290-1300, 1331-1341,
14 1381-1385, 1403-1414, 4889-5083, 1792 -1831, [https://www.menlopark.org/292/Special-event-](https://www.menlopark.org/292/Special-event-permits)
15 [permits](https://www.menlopark.org/292/Special-event-permits), MP001842.

16 **INTERROGATORY NO. 9:**

17 IDENTIFY each and every criteria used by the City of Menlo Park in acting upon
18 applications or requests for permits for the type that Zeleny has sought from the City of Menlo
19 Park.

20 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:**

21 Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and
22 overbroad. The interrogatory is also compound. Plaintiff does not identify with any particularity
23 what "permits" he is referring to in this interrogatory and thus it is confusing and unintelligible.
24 The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert
25 opinion and is thus violative of the attorney work product doctrine. The City also objects to the
26 extent this interrogatory seeks information that is protected by the attorney-client privilege.

VERIFICATION

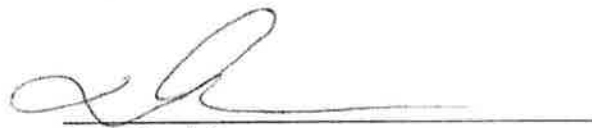
I, Dave Bertini, say:

I am the Chief of Police for the City of Menlo Park, and am a party in the above-entitled action.

I have read the foregoing **DEFENDANT CITY OF MENLO PARK'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S INTERROGATORIES, SET ONE** and know the contents thereof and am informed and believe that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 5 day of March, 2020 at Menlo Park, California.


Dave Bertini

Michael Zeleny v. Edmund G. Brown, Jr., et al.
United States District Court; Case No. 17-cv-07357-RS

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN MATEO:

I am a citizen of the United States and employed in the county aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 1900 O'Farrell Street, Suite 280, San Mateo, CA 94403. On the date set forth below I served the **DEFENDANT CITY OF MENLO PARK'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S INTERROGATORIES** on the following person(s) in this action:

David W. Affeld, Esq. Affeld Grivalkes LLP 2049 Century Park East, Suite 2460 Los Angeles, CA 90067 Telephone: (310) 979-8700 Facsimile: (310) 979-8701 Email: dwa@agzlaw.com	ATTORNEYS FOR PLAINTIFF MICHAEL ZELENY
David Markevitch, Esq. Markevitch Law Firm 1261 Lincoln Avenue, Suite 208 San Jose, CA 95125-3031 Telephone: (408) 463-6802 Facsimile: (408) 503-0889 Email: dmarkevitch@markevitchlaw.com	ATTORNEYS FOR PLAINTIFF MICHAEL ZELENY
Noreen P. Skelly Deputy Attorney General 1300 I Street, Suite 125 P. O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 210-6057 Facsimile: (916) 324-8835 Email: Noreen.Skelly@doj.ca.gov	ATTORNEYS FOR DEFENDANT ATTORNEY GENERAL XAVIER BECERRA

- ☒ (VIA MAIL -- CCP §§ 1013(a), 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the U.S. Postal Service and correspondence placed for collection and mailing would be deposited in the U.S. Postal Service at Redwood City, California, with postage thereon fully prepaid, that same day in the ordinary course of business.
- ☐ (VIA PERSONAL DELIVERY -- CCP §§ 1011, 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and causing each envelope(s) to be hand delivered on that day by , in the ordinary course of my firm's business practice.

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☐ (VIA FACSIMILE -- CCP §§ 1013(e), 2015.5, CRC 2008) By arranging for facsimile transmission from facsimile number 650/364-5297 to the above-listed facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of collection and processing of correspondence via facsimile transmission(s) and any such correspondence would be transmitted in the ordinary course of business. The facsimile transmission(s) was reported as complete and without error, and a copy of the transmission report is attached.

☐ (VIA OVERNIGHT MAIL/COURIER -- CCP §§ 1013(c), 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection by overnight mail service or overnight courier service. I am familiar with my firm's business practice of collection and processing of correspondence for overnight mail or overnight courier service, and my correspondence placed for collection for overnight delivery would, in the ordinary course of business, be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on **March 6, 2020**, at San Mateo, California.


Faith Kelly

TODD H. MASTER [SBN. 185881]
tmaster@hrmlaw.com
HOWARD ROME MARTIN & RIDLEY LLP
1900 O'Farrell Street, Suite 280
San Mateo, CA 94403
Telephone: (650) 365-7715
Facsimile: (650) 364-5297

Attorneys for Defendant
CITY OF MENLO PARK and
DAVE BERTINI

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS

**DEFENDANT CITY OF MENLO PARK'S
SECOND SUPPLEMENTAL RESPONSE
TO PLAINTIFF'S INTERROGATORIES**

RESPONDING PARTY: Defendant CITY OF MENLO PARK

PROPOUNDING PARTY: Plaintiff MICHAEL ZELENY

SET NUMBER: One (1)

COMES NOW responding party and answers the interrogatories of the propounding party.
The answers to these interrogatories are based upon the knowledge and information available to the
responding party as of the date of these answers. Responding party has not yet completed its

33(d), responding party respectfully refers plaintiff to California Penal Code §§ 26350, 26375, 26400 and 26405(r), and documents previously produced in this litigation which reference the requested policies, procedures, guidelines, rules, regulations, ordinances, laws and/or guidelines:: MP001229 – 1238, MP001279 – 1283, MP001331 – 1341, MP001381 – 1382, MP001403 – 1404, MP001413 – 1414 and 001842. To the extent it may also potentially be responsive, the City respectfully refers plaintiff to those documents being produced herewith (MP006618-6682) and the Caltrans Encroachment Permits Manual, which is equally available to plaintiff at <https://dot.ca.gov/programs/traffic-operations/ep/ep-manual>. Chapter 514 refers to Special Event permits.

INTERROGATORY NO. 8:

IDENTIFY each policy, procedure, rule, regulation, ordinance, guideline, or guidance of the City of Menlo Park governing applications for permits of the types that Zeleny has sought from the City of Menlo Park.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and overbroad. The interrogatory is also compound. Plaintiff does not identify with any particularity what “permits” he is referring to in this interrogatory and thus it is confusing and unintelligible. The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert opinion and is thus violative of the attorney work product doctrine. The City also objects to the extent this interrogatory seeks information that is protected by the attorney-client privilege.

Without waiving these objections, pursuant to FRCP 33(d), responding party respectfully refers plaintiff to those written communications between plaintiff and representatives of the City as they relate to his special event permit and film permit applications to the City, which identify and/or discuss the procedures, guidelines, rules and regulations, et seq that govern applications for Special Event and Film Permits: MP000236 – 240, 270- 274, 285-289, 291-292, 346-347, 352-355, 357-360, 362-365, 367-370, 373-376, 379-382, 440-444, 447-450, 463-465, 475-477, 479-480,

484, 486, 492, audio recording of plaintiff's appellate hearing (special event permit application) before City Manager Alex McIntyre, MP000948-1064, 1068-1183, 1449-1566, 1196-1205, video/audio recording of plaintiff's appellate hearing (Special event permit application) before Menlo Park City Council, MP001213-1214, 1219-1220, 1221, 1229-1238, 1248-1249, 1279-1283, 1290-1300, 1331-1341, 1381-1385, 1403-1414, 4889-5083, 1792 -1831, <https://www.menlopark.org/292/Special-event-permits>, MP001842.

INTERROGATORY NO. 9:

IDENTIFY each and every criteria used by the City of Menlo Park in acting upon applications or requests for permits for the type that Zeleny has sought from the City of Menlo Park.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Objection. The City objects to this interrogatory to the extent it is vague, ambiguous, and overbroad. The interrogatory is also compound. Plaintiff does not identify with any particularity what "permits" he is referring to in this interrogatory and thus it is confusing and unintelligible. The City also objects to this interrogatory to the extent it seeks a legal conclusion and/or expert opinion and is thus violative of the attorney work product doctrine. The City also objects to the extent this interrogatory seeks information that is protected by the attorney-client privilege.

Without waiving these objections, pursuant to FRCP 33(d), responding party respectfully refers plaintiff to those written communications between plaintiff and representatives of the City as they relate to his special event permit and film permit applications to the City, which identify the criteria used by the City in its actions on plaintiff's permit applications: MP000236 – 240, 270-274, 285-289, 291-292, 346-347, 352-355, 357-360, 362-365, 367-370, 373-376, 379-382, 440-444, 447-450, 463-465, 475-477, 479-480, 484, 486, 492, audio recording of plaintiff's appellate hearing (special event permit application) before City Manager Alex McIntyre, MP000948-1064, 1068-1183, 1449-1566, 1196-1205, video/audio recording of plaintiff's appellate hearing (Special event permit application) before Menlo Park City Council, MP001213-1214, 1219-1220, 1221,

1 such as the median strip of Sand Hill Road identified in plaintiff's SEP application which is owned
2 and controlled by the State of California.

4 HOWARD ROME MARTIN & RIDLEY LLP

5 

6 Dated: May 27, 2020

By: _____

7 Todd H. Master
8 Attorneys for Defendants
9 CITY OF MENLO PARK and
10 DAVE BERTINI

VERIFICATION

I, Dave Bertini, say:

I am the Chief of Police for the City of Menlo Park, and am a party in the above-entitled action.

I have read the foregoing **DEFENDANT CITY OF MENLO PARK'S SECOND SUPPLEMENTAL RESPONSE TO PLAINTIFF'S INTERROGATORIES, SET ONE** and know the contents thereof and am informed and believe that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 30th day of April, 2020 at Menlo Park, California.



Dave Bertini

Michael Zeleny v. Edmund G. Brown, Jr., et al.
United States District Court; Case No. 17-cv-07357-RS

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN MATEO:

I am a citizen of the United States and employed in the county aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 1900 O'Farrell Street, Suite 280, San Mateo, CA 94403. On the date set forth below I served the **DEFENDANT CITY OF MENLO PARK'S SECOND SUPPLEMENTAL RESPONSE TO PLAINTIFF'S INTERROGATORIES** on the following person(s) in this action:

David W. Affeld, Esq. Affeld Grivalkes LLP 2049 Century Park East, Suite 2460 Los Angeles, CA 90067 Telephone: (310) 979-8700 Facsimile: (310) 979-8701 Email: dwa@agzlaw.com	ATTORNEYS FOR PLAINTIFF MICHAEL ZELENY
David Markevitch, Esq. Markevitch Law Firm 1261 Lincoln Avenue, Suite 208 San Jose, CA 95125-3031 Telephone: (408) 463-6802 Facsimile: (408) 503-0889 Email: dmаркеvitch@markevitchlaw.com	ATTORNEYS FOR PLAINTIFF MICHAEL ZELENY
Noreen P. Skelly John W. Killeen Deputy Attorney General 1300 I Street, Suite 125 P. O. Box 944255 Sacramento, CA 94244-2550 Noreen Telephone: (916) 210-6057 John Telephone: (916) 210-6045 Facsimile: (916) 324-8835 Email: Noreen.Skelly@doj.ca.gov Email: john.killeen@doj.ca.gov	ATTORNEYS FOR DEFENDANT ATTORNEY GENERAL XAVIER BECERRA

- ☒ **BY ELECTRONIC SERVICE, ONLY**—Based on (1) a court order; or (2) agreement of the parties herein to accept electronicservice; or (3) notice of service by electronic mail due to Coronavirus (COVID-19), I caused the above-described document(s) to be sent electronically, addressed to the person(s) on whom it is to be served, at the email address(es) shown on the above Service List.”
- ☐ **(VIA MAIL -- CCP §§ 1013(a), 2015.5)** By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the U.S. Postal Service and correspondence placed for collection and mailing would be deposited in the U.S. Postal Service at Redwood City, California, with postage thereon fully prepaid, that same day in the ordinary course of business.

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- ☐ (VIA PERSONAL DELIVERY -- CCP §§ 1011, 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and causing each envelope(s) to be hand delivered on that day by _____, in the ordinary course of my firm's business practice.
- ☐ (VIA FACSIMILE -- CCP §§ 1013(e), 2015.5, CRC 2008) By arranging for facsimile transmission from facsimile number 650/364-5297 to the above-listed facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of collection and processing of correspondence via facsimile transmission(s) and any such correspondence would be transmitted in the ordinary course of business. The facsimile transmission(s) was reported as complete and without error, and a copy of the transmission report is attached.
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on **May 27, 2020**, at San Mateo, California.



Faith Kelly



ADMINISTRATIVE SERVICES DEPARTMENT

Council Meeting Date: March 24, 2009

Staff Report #: 09-043

Agenda Item #: E-1

PUBLIC HEARING: Adoption of a Resolution Amending the City's Master Fee Schedule to Incorporate Proposed Changes in Fees to Become Effective Immediately or July 1, 2009 or as Required by Statute for the Following Departments: Administrative Services, Community Services, Police, Public Works, Community Development, and Library.

RECOMMENDATION

Staff recommends City Council adoption of a resolution amending the City's Master Fee Schedule to incorporate proposed changes in fees to become effective immediately or July 1, 2009 or as required by statute of the following departments: Administrative Services, Community Services, Police, Public Works, Community Development – Building, and Library.

BACKGROUND

The Master Fee Schedule reflects fees charged by all City departments. It is usually amended annually so that fees reflect current costs to provide services or, in some cases, to add new fees for new City services and/or to eliminate fees for services that are no longer offered.

The City imposes different categories of fees with different requirements regarding how fees are set or changed:

- One category includes fees and charges for the use of facilities, services and access to property that is elective on the part of the customer/user. The purpose of these fees and charges is to generate revenues for access or use of the service or facility. There is no legal restriction on the amount of such fees or charges, and they can be effective immediately.
- A second category of fees is property development processing fees. These include fees for building and use permits, variances, building inspections, map applications, and planning services. These fees cannot exceed the reasonable cost of providing the service. Any new fee or increase to existing fees in this category can be effective no sooner than sixty days after approval by City Council.
- A third category relates to public records act requests and copies of documents and reports. These fees are limited to the actual cost of copying

(not including personnel time to copy) or the statutory amount, whichever is less. There are no changes recommended for any fees in this category at the present time.

Identifying the cost components of providing services is integral in the establishment of the fees and cost recovery rates. Because a detailed cost study had not been performed since 1998, the City Council identified a Cost/Allocation and Fee/Rate Study as a priority project for the 2006-07 Budget. The Cost Allocation Plan portion of the project was completed in time to be used in determination of transfers to the General Fund in the 2007-08 Budget, and was presented to Council at a study session on May 17, 2007.

On October 14, 2008 a study session was held to provide the City Council with a basic understanding of the approach and methodologies used to develop the cost of City services. The final report of the User Fee Study is available on the City's website (www.menlopark.org/departments/dep_finance.html). The data obtained from both the Cost Allocation and User Fee Studies was used by staff in the development of the recommendations presented in this staff report.

A city-wide Cost Recovery Fee Policy/Strategy is being developed for Council consideration. Such a policy/strategy, further informed by the current discussion of fee changes, will be used to guide future decisions as to what level of cost recovery is desired by the Council for providing specific services. It is anticipated that the Cost Recovery Fee Policy/Strategy will be brought back to Council early in the 2009-10 fiscal year.

ANALYSIS

Staff has prepared the following recommendations using analyses provided by the Cost Allocation and Overhead Rate Study, the Fully Burdened Hourly Staff Labor Rate Study, the Comprehensive Fee and Service Charge Study, as well as Council comments on fees and recovery rates at both the November 25, 2008 Public Hearing on staff fee change recommendations and the February 10, 2009 Study Session on the city-wide Cost Recovery Fee Policy/Strategy currently under development. Council discussion and action on the recommendations contained in this report will provide additional guidance to staff in developing the final Cost Recovery Fee Policy/Strategy.

The recommendations presented by staff in this report ensure not only that charges keep pace with rising costs of providing services, but are also competitive with comparable programs (where applicable) and responsive to demands for these services within the community. The proposed fee changes are summarized below, by department. Fees for which there are no recommended changes are not listed. Fee # refers to the number given (within the appropriate category) to each fee examined in the User Fee Study.

Administrative Services

Administrative Services primarily provides support to other City departments and therefore the fees were not reviewed in the User Fee Study. Staff recommendations for changes are based on staff's analysis of the costs of the service or activity.

Film, Video and Audio Production Permits: Recently a film production company shot some footage in Menlo Park that will be used in a documentary film. In advance of the actual filming, the production company contacted City staff to discuss compliance with Menlo Park ordinances and permit requirements. During this process staff determined that current fees did not fully recover the costs associated with the coordination of services to be provided by a variety of City departments. As staff has limited knowledge of what City services might be needed by a production company and the amount of effort required by staff to ensure minimum impact to the community, staff reviewed the film and video permitting programs and fees of the cities of Oakland, Palo Alto, San Jose, Glendale, Burbank and the County of San Mateo. **Based on this review, staff recommends five new fees to recover costs associated with coordinating the issuance and monitoring of all City permits required for Film/Video/Audio Productions.** As these are new fees, staff will closely monitor the level of effort expended when these permits are issued and present any needed modifications for Council consideration. **In addition to these new fees, current fees for other required permits, such as encroachment, special events, etc. will be collected at current rates for such services as listed in the Master Fee Schedule.**

The schedule below summarizes the current fees, proposed fees, percentage change in Administrative Service fees. Current fees for which no change is proposed are not listed.

Fee #	Fee Title	Current Fee	Proposed Fee	Change %	Cost Recovery % at Current Fee	Cost Recovery % at Proposed Fee
	FILM, VIDEO AND AUDIO PRODUCTION PERMITS					
	Application Review and Coordination	-0-	\$ 150.00	New		
	Revisions - each	-0-	50.00	New		
	Daily Permit Fees					
	Still Photography and Short Subject	-0-	50.00	New		
	Industrials	-0-	100.00	New		
	Features, TV, Music Videos and Commercials	-0-	150.00	New		

Library

The City of Menlo Park Library is a member of the Peninsula Library System (PLS). Service rates and fines are coordinated throughout the system by the PLS Administrative Council. Libraries in the PLS are moving toward further

standardization and recommend increasing the fee for replacement of a lost library card from \$1.50 to \$2.00. Staff recommends approval of this increase and also increasing the non-resident test proctoring fee from \$50 to \$75 per test. The proctoring fee for residents remains unchanged at \$25 per test. The test proctoring fee covers staff time associated with making arrangements with the test taker and testing institution, proctoring the exam, and various other associated processing and transmission costs. The vast majority of exam takers are non-residents and increasing the fee will make this a cost recovery service. If approved, these fee increases would generate an estimated \$2,600 in additional revenue.

The schedule below summarizes the current fees, proposed fees, percentage change in Library fees. Current fees for which no change is proposed are not listed.

Fee #	Fee Title	Current Fee	Proposed Fee	Change %	Cost Recovery % at Current Fee	Cost Recovery % at Proposed Fee
	REPLACEMENT FEE FOR LOST LIBRARY CARD	\$ 1.50	\$ 2.00	25%		
	MONITOR EXAM – Per Test Non-resident	50.00	75.00	50%		

Community Services

In November 2008 staff recommended a 7% fee increase for the Menlo Children's Center (MCC) programs to increase cost recovery. After much discussion the Council approved a 5% increase and requested that staff revisit the fees in March 2009. It was anticipated that the Cost Recovery Fee Policy/Strategy under development would be useful in determining the March fee recommendations. Subsequently at the February 24, 2009 Council meeting on mid-year budget revisions the Council directed staff to work with the Parks and Recreation Commission regarding the issue of MCC programs and fees. On March 18, 2009 the Parks and Recreation Commission began discussing these issues and anticipates reporting their results and recommendations to the Council in September 2009.

At this time staff is recommending a 2% increase to gradually move fees towards fuller cost recovery. The table below shows the percentage fee increases in MCC Preschool and School Age Childcare rates from 2004 through 2008 and the proposal for 2009.

2004	2005	2006	2007	2008	2009
6%	5%	10%	5%	5%	2%

In addition to the 2% fee increase staff is recommending a new Summer Camp offering for graduating preschoolers of two 4 week sessions and one 1 week camp. The camps would be designed as a transitional program for younger children

entering Kindergarten in the fall with local field trips and age appropriate activities. Enrollment would be limited to 15. The program would operate Monday through Friday from 8:00 a.m. to 4:30 p.m. during the summer months.

Staff also recommends establishing an hourly fee range for extra hours (on availability basis) for new and existing care. Setting the range between \$8.50 and \$15.00 per hour allows staff to base the cost on the type of service being provided.

Attachment C to this report contains a comparison table of MCC current and recommended fees to fees charged by other providers of similar services. With these increases MCC program fees continue to be below the average rate charged by other local childcare providers.

The schedule below summarizes the current fees, proposed fees, percentage change in Community Service fees as well as cost recovery of both current and proposed fees. When shown, "Fee #" corresponds to the fee number in the 2008 User Fee Study for the service listed. Only fees for which a change is proposed are listed. Due to the approach used for Community Service activities to determine cost recovery on a program level only, the cost recovery percentages are not available for the individual services. If approved it is estimated that increases and new fees will generate an additional \$30,000 annually at current enrollment.

Fee #	Fee Title	Current Fee	Proposed Fee	Change %	Cost Recovery % at Current Fee	Cost Recovery % at Proposed Fee
14	MENLO CHILDREN'S CENTER PRESCHOOL AND SCHOOL AGE CHILDCARE – RESIDENT:				60%	63%
5	Toddler Room					
	Full-time 5 day (per month)	1,512.00	1,542.00	2%		
	Part-time 3 day (per month)	1,109.00	1,131.00	2%		
	Part-time 2 day (per month)	739.00	754.00	2%		
5	Early pre-school and Pre-school room					
	Full-time 5 day (per month)	1,189.00	1,213.00	2%		
	Part-time 3 day (per month)	869.00	886.00	2%		
	Part-time 2 day (per month)	681.00	695.00	2%		
	Summer Camp for Young Kinders					
	4 weeks	New	811.00			
	1 week	New	236.00			
	Hourly Rate – Extra Hours	New	8.50 to 15.00			

Non-resident surcharge: Staff does not recommend changing the non-resident surcharge from the current rate of 35 percent of the resident fee. For example, if a resident fee is \$100, the non-resident fee is \$135, which includes the \$35 surcharge. This surcharge percentage applies when a specific dollar amount for non-resident use has not been specifically stated.

Cost Recovery Summary for Community Services: The total annual cost to the City for the fee-based services provided by the Community Services Department is estimated to be \$7,150,000. Annual revenues to the City under the current fee schedule are approximately \$4,147,000. Should the Council adopt staff's recommendations, annual revenues to the City are estimated to be \$4,177,000 (a 0.72% increase over current fee revenues). The resultant cost recovery for these services remains unchanged at 58%.

Police

False Alarm Program: Staff recommends adjusting false alarm service fees to reflect a closer alignment with costs established in the user fee study. Staff recommends lowering the Alarm Registration fee of \$35 to \$25 and increasing the Standard False Alarm fee of \$95 to \$175 and increasing the High Risk Alarm fee of \$174 to \$350. If approved it is estimated that the revised Alarm Registration fee would provide 114% cost recovery and the Standard False Alarm and High Risk Alarm fees would yield 50% and 28% respectively. These changes if approved would increase revenues by an estimated \$69,888 based on projected volumes for registration of new alarms services and Standard and High Risk False Alarm responses.

Parking Violations: Staff recommends increasing the penalty for all parking violations by \$5.00. The majority of this increase, \$4.50, is necessitated by the passage of State of California Senate Bill 1407 which amended Government Code section 70372 and increased the fee paid to the County of San Mateo for court facilities maintenance and construction from \$1.50 to \$6.00 per parking violation ticketed by the City of Menlo Park Police Department. The County forwards the required payment to the State. The City Attorney has reviewed all available information on this change in the law and has advised staff that the change was effective on January 1, 2009. However, the City cannot retroactively impose the \$4.50 increase on previously issued citations. Therefore, staff recommends immediate approval of the increase. Consequently, payment of the additional \$4.50 for violations ticketed from January 1, 2009 through March 24, 2009 (totaling an estimated \$17,860) must be paid from City funds. The additional \$0.50 increase will be retained by the City and is intended to offset increased costs since the 2006 increase in parking violations. These costs include fees charged by Turbo Data the ticket processing and collection service used by the City. Since the majority of the increase (\$58,118 based on estimated ticket volume) will be paid to the County, staff estimates the increase in City revenue will be \$8,442.

The chart below shows the fees paid by the City for each citation and the government code section that requires the payment. The last two fees shown are the fees imposed by the passage of Senate Bill 1407.

Description	Amount	Code Section(s)
County/State - Courthouse Construction Fund	\$ 2.50	76100 & 76100(b)
County/State - Criminal Justice Facilities Const. Fund	2.50	76101 & 76000(b)
State - Facilities Construction Fund	1.50	70372(b)
State – Critical Needs Facilities Construction Fund	3.00	70372(b)
Total Citation County/State Fees	\$ 9.50	

If the \$5.00 increase is approved parking violations listed in the Menlo Park Municipal Code will increase from \$37 to \$42. In addition, the \$5 increase will also impact California Vehicle Code violations and violations of the Uniform Fire Code. A complete listing of the changes to 68 specific violations is contained on Attachment B to this report.

Downtown Parking Permits Fee: This fee is collected by the Police Department; Public Works administers the repairs and maintenance associated with the various parking facilities for which the permits are issued. Staff recommends increasing the Employee and Merchant Delivery Vehicle annual fee by 1.6 percent from \$560 to \$569. The increase if approved would be effective on January 1, 2010. The long-term parking plaza renovation plan requires permit revenues to keep up with inflation to fund improvements and pavement resurfacing projects in the future. According to the *Engineering News-Record* the inflation rate for such project costs from July 2007 to June 2008 was 1.6 percent for the San Francisco Area. The increase in revenue from the increase in the annual parking permit fee is approximately \$7,000. Note: revenues for these fee are credited to the Downtown Parking Permit Fund.

The schedule below summarizes the current fees, proposed fees, percentage change in Police fees as well as the percentage of cost recovery for both current and proposed fees. "Fee #" corresponds to the fee number in the 2008 User Fee Study for the service listed. Only fees for which a change is proposed are listed.

Fee #	Fee Title	Current Fee	Proposed Fee	Change %	Cost Recovery % at Current Fee	Cost Recovery % at Proposed Fee
13	FALSE ALARM PROGRAM					
	Registration	35.00	25.00	-29%	160%	114%
	Standard Alarm Response	95.00	175.00	84%	27%	50%
	High Risk Alarm Response	174.00	350.00	101%	42%	85%
64	DOWNTOWN PARKING PERMITS:					
	Employee and Merchant Delivery Vehicle – Annual	560.00	569.00	1.6%		

Cost Recovery Summary for Police: The total annual cost to the City for the fee-based services provided by the Police Development is estimated to be \$312,000. Annual revenues to the City under the current fee schedule are approximately \$208,000. Should the Council adopt staff's recommendations, annual revenues to the City are estimated to be \$286,000 (a 38% increase over current fee revenues). The resultant cost recovery for these services would be increased from 67% to 92%.

Community Development – Building

As part of the Community Development Department's recommendations for proposed changes to the Master Fee Schedule at the November 25, 2008 City Council meeting, staff proposed changing the way building permit fees are calculated for new construction, additions and alterations. A trial period to allow testing of the new categories to ensure that they adequately capture the types of projects that require building permits was allowed. Additionally, staff recommended that the new fees go into effect on July 1, 2009. Attachments D-1 through D-7 show the proposed new fee schedules.

The new methodology for assessing building fees, as discussed in the "Full Cost Analysis of User Fee Services" report from Wohlford Consulting, will be "cost-based" as opposed to "value-based." The fees for new construction, additions, and alterations under the existing fee structure are based on the applicant's estimated valuation of the proposed project. The valuation from which fees are currently calculated is the total value of all construction work for which the permit is being issued including materials and labor. If, in the opinion of the Building Official, the stated value on the application is too low, the permit can be denied unless the applicant can provide detailed estimates to verify the value of the project. Adoption of the new cost-based fee structure will enable the establishment of fees based upon the full cost of the services provided by City staff, rather than on the value of the project submitted by the customer or established by the Building Official.

Currently the permit fees associated with mechanical, electrical, plumbing and single-family residential re-roofs are either flat fees or based on a per unit quantity (attachments D-4, D-5, D-6, and D-7). As an example, the current fee for a permit for the installation of a new water heater is \$58 regardless of the size or cost of installation. The fee for a permit issued to add electrical outlets to a room is based on the number of outlets being added. Plan review fees for these types of projects are not listed separately in the current fee schedule as the fee is built into the current flat permit fee. For larger projects where plans are required, the permit fee is based on the unit quantity and the plan review fee is based on the valuation.

Under the new fee structure, the permit and plan review fees for new construction, additions, and alterations are based on the square footage of the proposed project, construction type and occupancy group. The building code uses construction types and occupancy groups to establish the minimum design parameters for a structure. The fee amounts in the proposed fee schedule were determined by multiplying the cost of each of the staff positions times the amount of time staff spends performing all of the activities associated with the plan review and inspection of the project based on the square footage, construction type and occupancy group. Additionally, new flat fees for projects such as non-structural bathroom or kitchen remodels, window replacement, patio covers, and new siding have been added (attachment D-4). While the valuation for these types of projects can vary significantly, staff's time associated with their plan review and inspection typically does not.

The proposed permit fees associated with mechanical, electrical, plumbing and single family residential re-roofs are still flat or based on a per unit quantity but have been adjusted to reflect the full cost recovery based on the staff time spent to perform activities for these types of projects. Additionally, the plan review fee and permit fee have been separated for clarity and allows staff to not charge the plan review when not applicable.

Staff compared the actual fees collected to the fees that would have been collected under the new fee schedule for permits issued in the first quarter of fiscal year 2008-09. The results of the comparison show a 5.19 percent decrease in revenue under the proposed new fee structure. The table below shows the comparison for the plan check fees and permit fees by type of work and by type of building use.

Fiscal Year 2008-09 First Quarter Fee Comparison					
	Plan Check Fees		Permit Fees		Percentage Change
	Current Fee	Proposed Fee	Current Fee	Proposed Fee	
Commercial					
New	\$ 134	\$ 186	\$ 308	\$ 302	0.00%
Addition	5,842	8,684	7,587	3,978	0.00%
Alteration	14,846	14,984	19,980	15,868	-11.41%
Demo	-0-	1,080	1,898	928	0.00%
Repair	417	936	869	1,525	91.33%
Re-roof	-0-	235	5,615	520	-86.55%
Total	\$ 21,238	\$ 6,105	\$ 36,257	\$ 23,120	-14.38%
Multifamily					
Alteration	\$ 2,939	\$ 3,015	\$ 4,662	\$ 3,803	-10.29%
Repair	144	414	714	942	57.98%
Re-roof	-0-	564	3,045	1,104	-45.22%
Total	\$ 3,083	\$ 3,993	\$ 8,420	\$ 5,849	-14.45%
Single Family					
New Custom	\$ 14,056	\$ 18,223	\$ 19,072	\$ 10,323	-13.83%
New Tract	12,146	34,135	57,063	42,153	10.23%
Addition	18,432	19,443	23,605	18,787	-9.06%
Alteration	12,866	12,905	18,447	16,343	-6.59%
Demo	-0-	540	370	566	198.92%
Repair	1,307	2,748	4,156	4,093	25.21%
Re-roof	-0-	1,222	4,824	2,392	-25.08%
Total	\$ 58,807	\$ 89,216	\$ 127,537	\$ 94,657	-1.33%
Accessory					
New	\$ 1,485	\$ 1,831	\$ 2,039	\$ 1,787	2.63%
Re-roof	-0-	376	1,024	736	8.59%
Total	\$ 1,485	\$ 2,207	\$ 3,063	\$ 2,523	3.97%
Pool	\$ 694	\$ 434	\$ 1,515	\$ 594	-53.49%
TOTAL	\$ 85,308	\$ 121,955	\$ 176,992	\$ 126,741	-5.19%

As shown on the above table there is also a noticeable redistribution of the fees collected for plan review and permits. Historically the plan review fee has been calculated as a percentage of the permit fee. Under the proposed new fee structure, the plan review fees would increase by approximately 43 percent while the permit fee would decrease by approximately 28 percent based on permits issued in the first quarter of fiscal year 2008-09, which more accurately represents where staff's time is being spent.

Staff would note that the percentage decrease in revenues as a result of the change in the fee structure would vary over time. As the value of construction projects decreases in difficult economic times, revenues also decrease, reducing or eliminating the difference in revenues from the two different approaches to fees. The reverse is also true that when project valuations are higher, revenues would be higher under a value-based system. The proposed cost-based fee structure will not only provide a more fair and consistent basis on which fees for service are charged but also a more stable revenue stream year to year.

Menlo Park Municipal Water District (MPMWD)

Water Rates: The rates for MPMWD services through July 1, 2010 were approved at the April 18, 2006 Council meeting. This recap is presented for informational purposes only.

The City hired Bartel Wells Associates to review the MPMWD water rates to determine if the rates were adequate over time to pay for the anticipated increase in wholesale water costs, ongoing replacement projects, and any planned major capital projects. The comprehensive report was presented to Council at the public hearing held on April 18, 2006. At this public hearing Council approved Resolution No. 5663 adopting annual rate increases (over each of the four fiscal years ending July 1, 2010) to the consumption charge, fixed monthly meter charge, and capital facilities charge for new connections. The annual rate increases for the consumption and meter charge and consumption are 11.9 percent each year. The annual rate increases for new connections are based on the change in the *Engineering News Record* Index for the San Francisco Area. The change in the index for July 2006 to June 2007 was 2.8 percent.

The approved increased rates, effective as of July 1 of each year, are listed below.

Water Consumption Charge

Water Consumption	Current 2008-09	Approved 2009-2010
First 5 hundred cubic feet (ccf)	\$1.12	\$1.25
Next 6 through 10 ccf	1.40	1.57
Next 11 through 25 ccf	1.68	1.88
Consumption over	2.24	2.51

25 ccf		
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Water Meter Charge Per Month

Meter Size	Current 2008-09	Approved 2009-10
3/4" or smaller	\$ 7.01	\$ 7.84
1"	11.21	12.54
1-1/2"	23.12	25.87
2"	37.13	41.55
3"	67.96	76.04
4"	105.09	117.59
6"	233.29	261.06
8"	517.73	579.34
10"	1,148.96	1,285.68

Capital Facilities Charge (one-time charge upon connection)

Meter Size	Ratio to 5/8" Meter	Current 2008-09
3/4" or smaller	1.0	\$ 2,642
1"	1.6	4,226
1-1/2"	3.3	8,724
2"	5.3	14,009
3"	9.7	25,627
4"	15.0	39,636
6"	33.3	87,995

IMPACT ON CITY RESOURCES

The estimated net increase in General Fund revenue from the revisions discussed in this report is \$97,000.

User fees provide a significant source of cost recovery for the City. The recommended revisions to the Master Fee Schedule will be built into the 2009-10 budget recommendations and will help in maintaining service levels in the current fiscal year.

POLICY ISSUES

The results of the User Fee Study served as an important factor in the fee recommendations in this report, by allowing for a more accurate costing of City Services. With Council feedback on these recommendations staff will continue to develop a framework for a Cost Recovery / Subsidization Policy, which will enable decision makers to establish the cost recovery goals of the City and facilitate informed budget choices in the future.

ENVIRONMENTAL REVIEW

Adoption of a Master Fee Schedule is categorically exempt under current California Environmental Quality Act guidelines.

Carol Augustine
Finance Director

John McGirr
Revenue & Claims Manager

Barbara George
Director
Community Services Department

Bruce Goitia
Chief of Police
Police Department

Lisa Ekers
Engineering Services Manager
Public Works Department

Ron LaFrance
Building Official
Community Development Department

Susan Holmer
Director Library Services

PUBLIC NOTICE: Published legal notice on March 11 and 18, 2009 in The Country Almanac

ATTACHMENTS:

- A) Resolution Amending City Fees and Charges
- B) Parking Violations
- C) 2009 Community Services - Comparison Table of Program Fees
- D) Community Development – Building Fee Data
 - 1) Building – Administrative Fees
 - 2) Building – Plan Check Fees
 - 3) Building – Permit Fees
 - 4) Building – Accessory Structures Fees
 - 5) Building – Mechanical Plan Check and Permit Fees
 - 6) Building – Electrical Plan Check and Permit Fees

1 David W. Affeld, State Bar No. 123922
2 Damion Robinson, State Bar No. 262573
3 Affeld Grivakes LLP
4 2049 Century Park East, Ste. 2460
5 Los Angeles, CA 90067
6 Telephone: (310) 979-8700

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8 Attorneys for Plaintiff
9 Michael Zeleny
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL ZELENY,

Plaintiff,

vs.

EDMUND G. BROWN, Jr., *et al.*,

Defendants.

Case No. CV 17-7357 JCS

Assigned to:
The Honorable Richard G. Seeborg

**NOTICE OF DEPOSITION OF THE
CITY OF MENLO PARK**

Date: February 26, 2019
Time: 10:00 a.m.
Location:
Veritext
101 Montgomery Street, Ste. 450
San Francisco, CA 94104

Action Filed: December 28, 2017
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE THAT, Plaintiff Michael Zeleny ("Plaintiff") will take deposition on oral examination of defendant the City of Menlo Park, pursuant to Federal Rule of Civil Procedure 30.

The deposition will commence at 10:00 a.m. on February 26, 2019 at Veritext, 101 Montgomery Street, Suite 450, San Francisco, California 94104. The deposition will continue

1 from day to day thereafter, weekends and holidays excluded, until completed.

2 Pursuant to Federal Rule of Civil Procedure 30(b)(6), the City of Menlo Park is
3 required to designate one or more persons most knowledgeable and prepared to testify on the
4 topics set forth in **Attachment 1** hereto.

5 Pursuant to Federal Rule of Civil Procedure 30(b)(2) and 34, the deponent is required
6 to produce, at or prior to the time set for the deposition, the documents and tangible things set
7 forth in **Attachment 2**.

8 The deposition will be taken before a certified shorthand reporter or other person
9 authorized to administer oaths.

10 The deposition will be recorded by stenographic means, and will be videotaped and
11 audio recorded for potential use at trial and in other proceedings.

12 Dated: January 24, 2019

Affeld Grivakes LLP

13 
14 _____
15 David W. Affeld
16 Damion D. D. Robinson
17 Affeld Grivakes LLP
18 Attorneys for Plaintiff Michael Zeleny
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1. Any protests that have taken place or have been proposed by Michael Zeleny (“Plaintiff”) in either the City of Menlo Park or the City of San Francisco.
2. All communications between the City of Menlo Park (“Defendant”) and New Enterprise Associates, including, but not limited to, its partners, executives, officers, employees, agents, or attorneys (collectively, “NEA”), regarding (a) Michael Zeleny; (b) any protests of or against NEA; (c) child molestation by Min Zhu or allegations of such conduct; (d) NEA’s financial support of Min Zhu or his business ventures; (e) the California statutes governing the carrying of firearms in public; or (f) this lawsuit.
3. Any actual, threatened, or contemplated arrests and/or prosecutions of Michael Zeleny.
4. Defendant’s interpretation of the California statutes regulating the carrying of concealed or unconcealed (open carry) firearms, including, but not limited to, the prohibition on open or concealed carry, and the motion picture, video, or television production or entertainment event exceptions to such prohibitions;
5. Any rules, regulations, policies, procedures, guidelines, or guidance, whether formal or informal, regarding the interpretation and/or enforcement of the California statutes regulating the carrying of concealed or unconcealed (open carry) firearms.
6. The organizational structure of the persons, offices, agencies, and/or departments responsible for approving, issuing, granting, and/or denying video production or special event permits within the City of Menlo Park.
7. The persons with policymaking authority on behalf of the City of Menlo Park regarding (a) enforcement of the laws regulating the carrying of concealed or unconcealed (open carry) firearms; (b) interpretation of exemptions to those statutes; (c) the issuance of special events or video production permits; and (d) the regulation of protests and other public speech or expressive conduct.

1 8. Any rules, regulations, policies, procedures, guidelines, guidance, or training
2 materials, whether formal or informal, regarding the exceptions to the California statutes
3 regulating the carrying of firearms for video production, motion picture production, television
4 production, and/or entertainment events.

5 9. Any policies, procedures, guidelines, guidance, or training materials, whether
6 formal or informal, regarding the interpretation and/or enforcement of laws relating to content
7 deemed obscene as to minors.

8 10. The organizational and reporting structure of the City of Menlo Park Police
9 Department;

10 11. The policymaking authority of Dave Bertini;

11 12. Dave Bertini's work history relating to protests, public speech, public
12 expressive conduct, First Amendment activities, and enforcement of laws relating to the
13 carrying of firearms, obscenity, or obscenity as to minors.

14 13. Any legal or administrative requirements in order for Plaintiff to carry out his
15 protests, including the carrying of firearms without arrest or prosecution.

16 14. Plaintiff's permit applications for either "special event" or video production
17 permits;

18 15. Any rules, regulations, guidelines, guidance, policies, or procedures applicable
19 to Plaintiff's permit applications or his protests.

20 16. The denial of Plaintiff's permit applications and the reasons for any denial of
21 Plaintiff's permit applications.

22 17. Any standards governing the issuance or denial of permits for special events
23 and/or video productions.

24 18. Those permits that would be required from Defendant in order to allow Plaintiff
25 to carry out his protests, including the carrying of firearms, without the possibility of arrest or
26 prosecution.

27 19. Any rules, regulations, guidelines, guidance, policies, or procedures governing
28 the grant or denial of Plaintiff's permit applications.

1 20. Any city ordinances or other laws, rules, or regulations relating to the carrying
2 of firearms within the City of Menlo Park and/or carrying out “special events” or video or
3 television production within the City of Menlo Park.

4 21. The hearings on Plaintiff’s permit applications.

5 22. Any communications regarding Plaintiff, his protests, his permit applications,
6 this lawsuit.

7 23. All communications between Plaintiff and Dave Bertini.

8 24. Plaintiff’s prosecution by the District Attorney for the County of San Mateo for
9 carrying a concealed firearm.

10 25. All actions or other legal proceedings between Plaintiff and NEA.

11 26. The documents produced in this case, including, but not limited to, those
12 produced in response to this deposition notice.

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2 **ATTACHMENT 2**

3 The deponent is required to produce the following categories of documents at or prior
4 to the deposition:

5 1. All documents reflecting, referring to, relating to, or concerning the City of
6 Menlo Park's ("Defendant") interpretation of the California statutes regulating the carrying of
7 concealed or unconcealed (open carry) firearms.

8 2. All documents reflecting, referring to, relating to, evidencing, or concerning
9 any rules, regulations, policies, procedures, guidelines, or guidance, whether formal or
10 informal, regarding the interpretation and/or enforcement of the California statutes regulating
11 the carrying of concealed or unconcealed (open carry) firearms.

12 3. All documents reflecting, referring to, relating to, evidencing, or concerning
13 any rules, regulations, policies, procedures, guidelines, or guidance, whether formal or
14 informal, regarding the exceptions to the California statutes regulating the carrying of
15 firearms for video production, motion picture production, television production, and/or
16 entertainment events.

17 4. All documents reflecting, referring to, relating to, evidencing, or concerning
18 any policies, procedures, guidelines, or guidance, whether formal or informal, regarding the
19 interpretation or enforcement of laws relating to content deemed obscene as to minors.

20 5. Documents sufficient to show the organizational and reporting structure of the
21 City of Menlo Park Police Department;

22 6. Documents sufficient to show the organizational structure of those persons,
23 departments, agencies, divisions, or other bodies involved in processing special events and/or
24 video production permits within the City of Menlo Park.

25 7. Documents reflecting any policies, procedures, training materials, guidelines,
26 or other guidance, relating to protests or other public speech of expressive conduct within the
27 City of Menlo Park.

28 8. Documents sufficient to show the policymaking authority of Dave Bertini;

9. All documents reflecting any complaints or performance evaluations, or

1 otherwise commenting upon the conduct, of Dave Bertini as relates to protests, public speech,
2 First Amendment activities, or enforcement of laws relating to the carrying of firearms,
3 obscenity, or obscenity as to minors.

4 10. All documents reflecting, referring to, relating to, evidencing, or concerning
5 any rules, regulations, guidelines, guidance, policies, or procedures applicable to Plaintiff's
6 permit applications or his protests.

7 11. All documents reflecting the permits that would be required from Defendant in
8 order to allow Plaintiff to carry out his protests, including the carrying of firearms, without
9 the possibility of arrest and/or prosecution.

10 12. All documents reflecting, referring to, relating to, evidencing, or concerning
11 any rules, regulations, guidelines, guidance, policies, or procedures governing the grant or
12 denial of Plaintiff's permit applications.

13 13. Any city ordinances or other laws, rules, or regulations relating to the carrying
14 of firearms within the City of Menlo Park and/or carrying out "special events" or video or
15 television production within the City of Menlo Park.

16 14. The complete administrative record regarding Plaintiff's permit applications.

17 15. All documents reflecting communications between Plaintiff and Dave Bertini.

18 16. Any communications regarding Plaintiff, his protests, his permit applications,
19 this lawsuit that have not previously been produced.

20 17. All documents relating to, reflecting, referring to, or concerning Plaintiff's
21 prosecution by the District Attorney for the County of San Mateo for carrying a concealed
22 firearm.

23 18. All documents reflecting the standards governing the issuance or denial of
24 permits for special events and/or video productions in the City of Menlo Park.

25 19. All documents called for by Plaintiff's prior Requests for Production of
26 Documents that have not been produced prior to the deposition.

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PROOF OF SERVICE

I, the undersigned, certify and declare that I am over 18 years of age, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. On January 25, 2019, I served true copies of the above document entitled:

NOTICE OF DEPOSITION OF THE CITY OF MENLO PARK

by depositing them in sealed envelopes with the charges fully prepaid, and placing such envelopes for overnight delivery by FedEx, addressed as follows:

Noreen P. Skelly, Esq. Office of the Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550	Todd H. Master Howard Rome Martin & Ridley LLP 1900 O'Farrell Street, Suite 280 San Mateo, CA 94403
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Place of Deposit: 2049 Century Park East, Los Angeles, California 90067

I hereby certify that I am a member of the Bar of the United States District Court.

Executed on January 25, 2019 at Los Angeles, California.



Damion Robinson

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s/ Gabrielle Bruckner
Gabrielle Bruckner